

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF LABOR AND EMPLOYMENT LAW**

FIELD OPERATIONS MANUAL

CHAPTER NINE CHILD LABOR

This document is part of the latest version of the Virginia Department of Labor and Industry Division of Labor and Employment Law's Field Operations Manual. This document supersedes any and all previous editions.

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DISCLAIMER

The Field Operations Manual (FOM) is an operations manual that provides the Division of Labor and Employment Law investigators and staff with interpretations of statutory provisions, procedures for conducting investigations, and general administrative guidance. The FOM was developed by the Labor and Employment Law Division under the general authority to administer laws that the agency is charged with enforcing. The FOM reflects policies established through changes in legislation, regulations, court decisions, and the decisions and opinions of the Virginia Department of Labor and Industry. Further, the FOM is not used as a device for establishing interpretative policy.

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Section 1.00 Coverage

Virginia's Child Labor Laws are set forth in Chapter 5 of Title 40.1 of the Code of Virginia. In addition, the following three regulations have been promulgated pursuant to Chapter 5: 1) Virginia Hours of Work for Minors; 2) Virginia Rules and Regulations Declaring Hazardous Occupations; and 3) Virginia Regulations Governing the Employment of Minors on Farms, in Gardens, and in Orchards. These laws and regulations apply to all private industry employers employing children, unless a specific exemption is provided.

Also, there are federal child labor laws. Employers meeting the coverage requirements of the federal Fair Labor Standards Act must also abide by the federal requirements. Whenever state and federal law differ, the more stringent standard shall apply. The Wage and Hour Division of the U. S. Department of Labor administers and enforces the federal child labor statutes and regulations.

Section 2.00 Youth Employment Certificates (Work Permits), Work Training Certificates, and Theatrical Permits

- A. Youth Employment Certificates (work permits) are issued by the Labor and Employment Law Division of the Department of Labor and Industry. Minors must be at least 14 years of age to secure an Employment Certificate. An Employment Certificate must be issued each time a minor begins employment, after a break in employment, or when the job duties change substantially. Once a minor turns sixteen, an Employment Certificate is no longer required.
- B. There are 2 methods available for obtaining youth Employment Certificates. Instructions for both options are available on the Department of Labor and Industry website: www.doli.virginia.gov .

(1) Electronic Process (Preferred)

- (a) This is a 3 step completely electronic (no paperwork, no mailing of forms) process available through a link on the Department’s website. Detailed instructions are provided throughout the process. It is **IMPORTANT** to read all the instructions! The youth Employment Certificate is issued directly to the employer electronically through the account they established during the application process.
- (b) Employment Certificates issued through this process are subject to final approval by Division staff. **Important Note:** All electronic youth Employment Certificate issued are subject to revocation and/or modification as necessary.

(2) The Manual Process requires completion and submission 2 paper forms which are available for download from the website or if necessary may be mailed to the applicant.

- (a) Intention to Employ Form - this is to be completed by the employer stating the duties the minor will be performing and certifying that the minor will be employed in accordance with the hours of work limitations. This form must state the specific proof of age document that the employer has reviewed and has retained on file.
- (b) Permission for Employment Form - this is filled out by the parent or legal guardian. **Important Note:** This form must be signed in the presence of a notary and contain an official notary seal.
- (c) Both forms must be mailed together to the Division at the address provided on the bottom of the form.
- (d) Application forms will be processed and reviewed for final approval. **Important Note:** The youth Employment Certificate will be mailed within 10 business days **to the employer.**

- (e) Should the application be deficient or otherwise unacceptable a notice will be mailed to the Parent/Guardian of the applicant explaining the reason for denial. A remedy, if possible, will be suggested.

C. Acceptable Proofs of Age

- (1) Birth Certificate
- (2) Passport
- (3) Baptismal Record
- (4) Government ID

D. All youth Employment Certificate documentation will be maintained by the Division until the minor turns 18 years of age.

E. Minors performing volunteer work and minors employed on farms, orchards, and in gardens are exempt from securing the work permit.

F. Work-Training Certificate:

- (1) Issued by the Coordinator of Schools.
- (2) Allows minors 14 and 15 years of age to work during school hours and in occupations typically prohibited until age sixteen, not including hazardous occupations. They must also obtain a work permit.
- (3) Allows minors and 16 and 17 years of age to be employed in Hazardous Occupations as defined by 16VAC15-30-20, Nos. 4, 7, 9, 10, 11, 13, and 15.
- (4) By issuing the Work-Training Certificate, the Coordinator certifies to the Department that the minors are employed under the following conditions:
 - (a) 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.
 - (b) The student learner is employed under a written agreement which provides: 1. that the work of the student learners in the occupations declared particularly hazardous shall be incidental to the training; 2. that such work shall be intermittent and for short periods of time, and under the direct and close supervision of a qualified and experienced person; 3. That safety instruction shall be given by the school and correlated by the employer with on-the-job training; and, (d) that a schedule of organized and progressive work processes to be performed on the job shall have been prepared.

- (c) Each such written agreement shall contain the name of the student learner, and shall be signed by the employer and the school coordinator or principal. Copies of each agreement shall be kept on file by the school, the employer, and the Department of Labor and Industry. This exemption for the employment of student learners may be revoked in any individual situation where it is found that reasonable precautions have not been observed for the safety of minors employed thereunder. A high school graduate may be employed in a occupation in which training has been completed as provided in (1) and (2) above as a student learner, even though the minor is not yet 18 years of age.

G. Theatrical Permits:

1. Issued for minors under 16 years of age to be employed in a drama, play, performance, concert or entertainment.
2. Management of the theater or other public place where performance is to be held must secure a permit from the Department of Labor and Industry:
 - (a) The application form is processed by the Labor and Employment Law Division.
 - (b) Application must be sent to the Department at least 5 days before the performance.
 - (c) There are no restrictions on hours of work for minors who have obtained a valid theatrical permit.
 - (d) The permits are issued by the Division.
 - (e) Minors cannot appear in performances that the Department deems detrimental to their health or morals or which causes their education to be neglected or hampered.

Section 3.00 Hours of Work

A. Non-agricultural employment:

1. Minors 16 and 17 years of age:

No restrictions on the hours of work.

2. Minors 14 and 15 years of age:

(1) May not work more than 3 hours a day on a school day.

(2) May not work more than 18 hours a week in a school week.

(3) May not work more than 8 hours a day on a non-school day.

(4) May not work more than 40 hours a week in a non-school week.

(5) May not work before 7 a.m. or after 7 p.m., except between June 1st and Labor Day, they may work as late as 9 p.m.

(6) May not work during school hours unless enrolled in a school worktraining program and certified with a work-training certificate.

(7) Must be given a 30-minute rest or meal period after 5 hours of continuous work.

3. Minors 12 and 13 years of age:

(1) Newspaper carriers cannot work before 4 a.m., after 7 p.m., or during school hours.

B. Agricultural employment:

1. Minors under 16 years of age cannot be employed during the hours school is in session.

2. Must be given a 30-minute rest or meal period after 5 hours of continuous work.

3. The restrictions in 1 and 2 do not apply to minors employed by their parent or a person standing in the place of a parent on farms, gardens, and in orchards owned or operated by such parent or person.

C. Exemptions to Hours of Work Restrictions:

There are no restrictions on hours of work in the following situations:

1. Non-agricultural jobs where the minor's parent owns the business. The parent must be the sole owner of the business.
 2. Page or clerk for either the House of Delegates or the Senate of Virginia.
 3. Domestic work when such work is performed in connection with the minor's own home and directly for the parent or other such person standing in the place of a parent.
 4. Work on farms, gardens, or in orchards which the parent owns or operates.
 5. Performer in a drama, play, concert, movie, or other entertainment, provided the minor has a theatrical permit issued by the Department.
 6. Work performed for the state or any of its institutions or political subdivisions thereof, or any public body.
 7. Activities performed for a volunteer rescue squad.
 8. When a minor is engaged in occasional work around someone's home, but not in connection with their business, trade or profession, the only restriction on the minor's hours of work is that the minor cannot work during school hours.
- D. The Department will exempt 14 and 15 year old minors from the hours of work restrictions when employed in sports-attending services. Permissible duties of the sports attendants include: pre- and post-game or practice set-up of balls, items and equipment; supplying and retrieving balls, items, and equipment during a sporting event; clearing the field or court of debris, moisture, etc. during play; providing ice drinks, towels, etc. to players; running errands for trainers, managers, coaches, and players before (pre-game, set-up, and player warm-up), during, and after (post-game activities) a sporting event, and returning and/or storing balls, items and equipment in club house or locker room after a sporting event. For purposes of this exception, impermissible duties include grounds or field maintenance such as grass mowing, spreading or rolling tarpaulins used to cover playing areas, etc.; cleaning and repairing equipment; cleaning locker rooms, showers, lavatories, rest rooms, team vehicles, club houses, dugouts, or similar facilities; loading and unloading balls, items, and equipment from team vehicles before and after a sporting event; doing laundry and working in concession stands or other selling and promotional activities.
- E. High school graduates and expelled students:
1. When minors who are 14 and 15 years of age have graduated from high school, school is no longer "in session." After graduation, they may not work more than 8 hours per day and not more than 40 hours per week, but they are subject to the remaining hours restrictions.

2. When minors 14 or 15 are subject to an order of the Juvenile Court prohibiting them from attending school, school is no longer "in session" for them and therefore they may work during school hours not more than 8 hours a day, 40 hours a week, but in accordance with the other hours restrictions. Representatives should check with the proper court officials to verify the children have been prohibited from attending school.
3. When minors 14 and 15 years of age have been expelled from school (which does not include a suspension from school for a limited period), school is no longer "in session" for them and therefore they may work during school hours, not more than 8 hours a day, not more than 40 hours a week, but in accordance with the other hours restrictions for 14 and 15 year olds.

F. Outside school hours defined.

1. *Outside school hours* means such periods as before and after school hours, holidays, summer vacations, weekends, and any other day or part of a day when school is not in session as determined by the local public school district in which the minor resides when employed. Summer school sessions, held in addition to the regularly scheduled school year, are considered to be *outside of school hours*. Thus, the phrase *school hours* refers to the hours that the local public school district where the minor resides while employed is in session during the regularly scheduled school year rather than the individual student's attendance requirements or whether the student has been excused from the classroom for a day or part of a day.
2. In some instances a school may employ a student 14 or 15 years of age to work in the minor's own school. An example of this would be in the cafeteria during the noon hour or during a period when the student is not in class. Such employment will be considered to be "outside school hours."
3. When a minor 14 or 15 years of age has a child to support and appropriate state officers, pursuant to state law, have waived school attendance, school is no longer "in session" for that minor. Therefore, the minor may work during school hours, not more than 8 hours a day, 40 hours a week, but in accordance with the remaining hours restrictions for 14 and 15 year olds.

G. Week defined: "Week" as used by the Virginia Department of Labor and Industry in interpreting and applying the state child labor laws and regulations means a standard calendar week of 12:01 a.m. Sunday through midnight, Saturday.

Section 4.00 Time Records

A. Non-agricultural employment:

1. Must be kept for all minors under 16 years of age.
2. Must be kept at the site where the minor is employed.
3. Must show the beginning and ending time of work each day and the time given for a meal or rest period. Meal or rest period time is not counted in the total amount of time worked by the minor.
4. The records for the last twelve months of work for each minor employee shall be kept for 3 years from the date of the latest work period.

B. Agricultural employment:

Every employer (other than parents or guardians standing in the place of parents employing their own child or a child in their custody) who employs in agriculture any minor under 16 years of age on days when school is in session, or on any day if the minor is employed in a hazardous occupation shall maintain and preserve records containing the following data with respect to each and every such minor so employed:

1. Name in full.
2. Place where minor lives while employed. If the minor's permanent address is elsewhere, both addresses must be maintained.
3. Date of birth.

Section 5.00 Prohibited Employment, Non-agricultural

A. Children under 16 years of age cannot be employed in the following occupations unless they are enrolled in a school work-training program and a work-training certificate has been obtained:

1. Manufacturing establishment.

"To manufacture" means to make anything from raw materials by hand or by machinery or by art. Any occupation involved in the manufacture of a product from the assembling of raw materials for manufacture to the completion of the manufactured article is a part of the manufacturing process, and therefore a manufacturing occupation. All manufacturing is processing, but not all processing is manufacturing. Examples of manufacturing are as follows:

- (1) Trimming and examining when they are performed as a part of a manufacturing process.
- (2) Assembling of boxes or crates in which goods are to be packed, including making of the lid or cover, is a change in the raw material from which the box or crate is made and constitutes "manufacturing" whether done by hand or machine. However, assembling light-weight flat folded cartons either by stapling with hand stapler machine or by pasting with tape is not manufacturing.
- (3) "Lidding" (the operation of fastening down the cover on the filled container) when it is accomplished by use of a power-driven machine.
- (4) Stitching of bags containing produce by means of automatic electric sewing machines in fresh fruit and vegetable packing sheds.
- (5) If the article is sold to the consumer as a package or carded article, as is often the case with chewing gum or buttons, the packaging or carding of the article into the form in which it is offered to the public is considered an integral part of the manufacturing of the article when the work is performed in the manufacturing establishment.

Processing: "To process" ordinarily is understood to convey the idea of an operation in the course of which goods undergo a change in form or substance, for example:

- (1) The cleaning and filleting of fish.
- (2) The slaughtering of livestock.
- (3) Dressing of poultry.

- (4) Cracking of nuts.
- (5) Laundering as performed by commercial laundries.
2. Mechanical establishment.
A "mechanical establishment" is a business having to do with, or having skill in the use of machinery or tools (both manual and power-driven) which usually produce a service. Examples include such businesses as garages, body shops, machine shops, upholsterers, etc.
3. Commercial cannery.
4. Operation of any automatic passenger or freight elevator.
5. Dance studio.
6. Providing care for resident patients as a laboratory helper, therapist, orderly, or nurses' aid.
7. In the service of any veterinarian, animal boarding/grooming facility or any establishment in which they would come in contact with animals. Children 14 years of age may be employed in this type of establishment performing office work of a clerical nature in bona fide office rooms; however, they cannot be exposed to X-ray equipment until 18 years of age. A child would have to be 16 years of age to be employed in any occupation that would involve contact with animals.
8. Warehouse.

Warehouse includes the following:

- (1) Public warehouse
- (2) Cold storage warehouses.
- (3) Long distance moving and storage establishments.
- (4) Wholesale houses.
- (5) Tobacco warehouses.
- (6) Warehouses operated either as departments or as separate establishments by retail stores.
- (7) Warehouses operated either as separate establishments or departments by factories, canneries, and other manufacturing and processing establishments.

A warehouse does not include the following:

- (1) Fresh fruits and vegetable packing sheds and concentration points.
- (2) Stock rooms operated by retail stores as an incident to selling and located on the same premises as the retail store.
8. Planer mill lumber yard where lumber, green or dry, is stacked and stored.
9. Processing work in any dry cleaner or laundry establishment.
10. Undertaking establishment or funeral home.
11. Curb service at a restaurant.
12. Room service in a hotel or motel.
13. Brick, coal, or lumber yard.
14. Ice plant.
15. Scaffolding work.
16. Construction trade. If construction is in an on-going stage, children under 16 cannot be employed at the construction site in any capacity even though work for the day has ceased. Minors 14 and 15 years of age can do clean-up work once the construction project is completed. At such time, even though the employer is classified in the construction industry, the employment would not remain under the category of construction trade. Instead, employment would be classified as janitorial as long as the minor is performing allowable duties, such as window washing, removing scrap material, etc.
17. Outdoor theater.
18. Cabaret, carnival, fair, floor show, pool hall, club, or roadhouse.
19. Lifeguard at a beach.
20. Street trades.
21. Any occupation or duties not specifically authorized by Federal Regulation.

Section 6.00 Hazardous Employment, Non-agricultural

A. Minors under the age of 18 years of age cannot be employed in the following occupations:

1. Any occupation that exposes them to a recognized hazard capable of causing injury or death.
2. Power-driven grinding, abrasive, polishing, or buffing machines.
3. Preparation of compositions using poisonous or dangerous chemicals.
4. Manufacture of paints, colors, white lead, brick tile or kindred products.
5. Places where goods of alcoholic content are manufactured, bottled, or sold for consumption on the premises, except in places where the sale of alcoholic beverages is merely incidental to the main business actually conducted, or to deliver alcoholic goods.
6. The following occupations declared hazardous by the Commissioner of Labor and Industry:
 - (1) Manufacturing or storage occupations involving explosives.
 - (2) Logging and sawmilling occupations.
 - (3) Power-driven woodworking machine occupations.
 - (4) Occupations involving exposure to radioactive substances and to ionizing radiations.
 - (5) Power-driven hoisting apparatus occupations.
 - (6) Power-driven metal forming, punching, and shearing machine occupations.
 - (7) Occupations in connection with any mining operation.
 - (8) Occupations involving slaughtering, meatpacking, processing, or rendering.
 - (9) Power-driven bakery machine occupations.
 - (10) Power-driven paper products machine occupations.

- (11) Occupations involved in the manufacture of brick, tile, and kindred products.
- (12) Occupations involved in the power-driven operation of circular saws, band saws, and guillotine shears.
- (13) Occupations involved in wrecking, demolition, and shipbreaking operations.
- (14) Occupations in roofing operations.
- (15) Occupations in excavating operations.
- (16) Fire fighting.

Note: Minors 16 years of age or over enrolled in a bona fide school work-training program or apprenticeship program may be employed in Hazardous Items Nos. 4, 7, 9, 10, 11, 13, and 15.

Section 7.00 Permissible and Hazardous Employment – Agricultural

- A. The following are occupations permitted for minors under 16 years of age employed on farms, in gardens or in orchards:
1. Handling chemical pesticides and fertilizers not included in Hazardous Item # 8 of subsection B below.
 2. Loading or unloading trucks.
 3. Operating garden-type tractors.
 4. Picking vegetables and berries and placing them on conveyors or in containers.
 5. Working with farm animals, except work with certain breeding stock in confined areas, including showing any animal at livestock shows, fairs, exhibits or similar activities when not taking place on a farm.
 6. Hand planting and cultivation.
 7. Raising and caring for poultry.
 8. Milking cows.
 9. Processing and storing milk and dairy products.
 10. Detasseling corn.
 11. Cleaning barns, equipment storage buildings, chicken coops, etc.
 12. Mowing lawns.
 13. Riding, driving, or exercising horses.
 14. Picking cotton.
 15. Handling of irrigation pipes.
 16. Harvesting and storing tobacco.
 17. Riding on transplanters.
- B. The following are occupations considered hazardous and not permitted for children under 16 years of age on farms, in gardens and in orchards:
1. Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting

an implement or any of its parts to or from such a tractor.

- (1) Farm tractors overturn easily and the operator or passenger may be seriously injured. Serious injuries are complicated if the accident occurs in an isolated area and is not discovered quickly.
 - (2) The rotating drive mechanisms of implements or power-take-off drives inflict serious injuries if parts of the body or clothing come in contact with the exposed drive shaft or moving parts.
 - (3) Persons under 16 may still operate garden-type tractors, which are free from the extensive hazards associated with large, heavy-duty equipment.
2. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
- (1) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner.
 - (a) These machines use rotary gears, revolving shafts, driving chains, belts, augers, conveyor belts and chains, knives, blowers, levers, and hydraulic pistons to grasp, cut, pound, grind, convey, compress, push, or pull material. The farm worker sometimes comes in contact with moving parts and is seriously injured when he tries to unclog, repair, or adjust the machine when the motor is running.
 - (2) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer.
 - (a) These machines, except for some that are fed manually, are similar in construction and operation to those described above, and involve the same hazards. There is an additional danger that if a part of the body is caught by a turning auger, amputation is almost unavoidable.
 - (b) Persons under 16 may move the crop to the person feeding the machine and remove the finished product from the area; they may load and unload material from other types of conveyors, such as belt, bucket, or chain.
 - (3) Power post-hole digger, power post driver, or non-walking type rotary tiller.
 - (a) The hazard of the post-hole digger is the danger of becoming

entangled with the rotating drive; with the power post-driver, the hazard is the possibility of being struck by the descending ram.

- (b) Persons under 16 may set posts in holes, tamp the earth, attach and stretch wire, install gates, and repair fences.
- 3. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:
 - (1) Earthmoving equipment.
 - (2) Forklift.
 - (3) Potato combine.
 - (4) Chain saw.
- 4. Working on a farm in a yard, pen, or stall occupied by:
 - (1) A bull, boar, or stud horse maintained for breeding purposes.
 - (2) A sow with suckling pigs, or cow with newborn calf (with umbilical cord present).
 - (a) This does not prohibit work with these animals or any animals in an open area. It does not prohibit work with beef or range bulls and cattle, dairy cattle, or breeding stock on the range.
- 5. Working from a ladder at a height of over 20 feet for purposes such as pruning trees, picking fruit, etc.
 - (1) This does not prohibit using ladders to reach a work site above 20 feet, as long as the work is not done from a ladder or scaffold.
- 6. Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.
- 7. Working inside:
 - (1) A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere.
 - (2) An upright silo within two weeks after silage has been added or when a top unloading device is in operating position.

- (3) A manure pit.
- (4) A horizontal silo while operating a tractor for packing purposes.
 - (a) When oxygen is replaced by another gas or consumed by fermentation, anyone entering these storage areas is in danger of asphyxiation.
 - (b) If the top unloading device is in operating position in the silo, a person may become entangled in its cutting and tearing mechanism and be injured seriously.
 - (c) Employees under 16 may work inside the non-gas-tight type silo while the unloading device is in a raised position, and they may also operate this device from outside the silo.
 - (d) The hazards involved in operating a tractor for packing purposes in a horizontal silo is the danger of overturning.
8. Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) as Category I of toxicity, identified by the word "poison" and the "skull and crossbones" on the label; or Category II of toxicity, identified by the word "warning" on the label.
 - (1) Many agricultural chemicals present serious health hazards. Some have a corrosive effect on body tissue. Some affect the central nervous system, causing respiratory failures and many cause death by the accumulation of even minute quantities over a prolonged period.
 - (2) The hazards involved in the job of flagman are that he stands in the line of flight to direct the pilot and also because of the possibility of contamination from the chemical being applied.
 - (3) Minors under 16 may handle and apply fertilizers or chemicals that are not labeled as indicated above.
9. Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord.
10. Transporting, transferring, or applying anhydrous ammonia

Section 8.00 Exemptions Generally

- A. Nothing in Virginia's Child Labor Laws and regulations except hazardous occupations (§40.1-100(A)); theatrical performers, (§§ 40.1-101 and 40.1-102); and cruelty and injury to children, (§ 40.1-103) shall apply to minors employed in the following:
1. A child engaged in domestic work when such work is performed in connection with the child's own home and directly for his parent or a person standing in place of the parent. The word "parent" or a "person standing in place of a parent" includes natural parents, or any other person where the relationship between that person and a child is such that the person may be said to stand in place of a parent. For example, one who takes a child into his or her home and treats it as a member of his or her own family, educating and supporting the child as if it were his or her own, is generally said to stand in "place of a parent."
 2. A child employed in occasional work performed outside school hours where such work is in connection with the employer's home but not in connection with the employer's business, trade, or profession.
 3. A child 12 or 13 years of age employed outside school hours on farms, in orchards or in gardens with the consent of the parent or a person standing in place of the parent.
 4. A child between the ages of 12 and 18 employed as a page or clerk for either the House of Delegates or the Senate of Virginia.
 5. A child participating in the activities of a volunteer rescue squad.
 6. A child under 16 years of age employed by his or her parent in an occupation other than manufacturing or one declared hazardous by code or regulation. The exception applies only when the parent is the sole employer of the minor. If the parent is a partner in a partnership or an officer of a corporation, the parental exemption does not apply unless the parents are the only members of a partnership or the sole owners of the corporation.
- B. Nothing in Virginia's Child Labor Laws or regulations, except theatrical performers, (§§ 40.1-101 and 40.1-102); and cruelty and injuries to children, (§ 40.1-103), shall apply to a child employed by the parent or a person standing in place of the parent on farms, in orchards, or in gardens owned or operated by such parent or person.
1. The parental exemption applies to the minor's natural parent or to a "person standing in the place of his parent" so long as the employment is on a farm owned or operated by such parent or person.
 2. "Owned by" the parent or person standing in the place of the parent includes his part ownership as a partner in a partnership or as an officer of a corporation which

owns the farm if his ownership interest in the partnership or corporation is substantial.

3. “Operated by” the parent or person standing in place of the parent means that he exerts active and direct control over the operation of the farm or ranch by making day to day decisions affecting basic income, work assignments, hiring and firing of employees and exercising direct supervision of the farm or ranch work. A ranch manager, therefore, who meets these criteria could employ his own children under 16 on the ranch he operated without regard to the hazardous occupations.

Section 9.00 Penalties

- A. Anyone who illegally employs a minor may be subject to a civil money penalty of up to \$10,000 for each violation that results from the employment of a child who is seriously injured or dies in the course of the employment, and up to \$1,000 for every other violation. When a civil money penalty is assessed against an employer, the employer may within 21 days after receipt of the notice of such penalty request an informal conference, if not the violation and penalty will become a final order of the Commissioner and not subject to review by any court or agency except upon a showing of good cause.

- B. Two sections of Title 40.1, Chapter 5, Child Labor Laws of Virginia, provide criminal penalties.
 - 1. The use of children for sexually explicit visual material is prohibited. A violation is a Class 6 felony. Section 40.1-100.2 of the Code of Virginia.

 - 2. Employment of a child in a street or public place, including the sales of candy, books, and subscription contracts for periodicals without securing a permit from the Department of Labor and Industry or employing a child less than 16 years of age in such an occupation is a Class 1 misdemeanor. Section 40.1-112 of the Code of Virginia.

Section 10.00 Instructions for Completing Child Labor Civil Money Penalty Report

A. Completion of Form

1. In the upper left blocks of the form enter:
 - (1) Employer: same name as appears on the Inspection Reports, Complaint Reports, and all other forms --- the trade name of the employer.
 - (2) Address: street address of the establishment investigated.
2. At the top of the columns marked "#1 through #5," place the initials of the child for whom a Civil Money Penalty Report is being calculated. Even though the bottom of the column is "0," the calculation must be shown. Please make sure the initials match the minor's name referenced in the narrative and on the interview and records review sheets.
3. Use of "VIOLATION 1st or 2nd." All first investigations of an establishment use "1st" column. All subsequent investigations resulting from child labor violations cited on a previous investigation, use column "2nd." Only cite a 2nd offense violation amount for the same violation of the Child Labor Laws cited during a previous investigation. Example: If on a prior investigation, the same employer was cited for hours of work violations and during the subsequent investigation, you find the employer in violation of hours of work, records, and failure to have minors secure work permits, you would cite a 2nd offense amount for the hours of work violations, but a 1st offense amount for the records and permit certification violations.

B. Section I WORK VIOLATIONS. THIS SECTION IS USED FOR CITING CHILD LABOR VIOLATIONS.

1. Hours. Any violation of hours requirements set forth in Chapter 5 of Title 40.1, Code of Virginia, is cited here. Cite \$300 for 1st offense; cite \$600 for 2nd offense and subsequent offenses. If child found in violation of more than one hours requirement, only one penalty amount (\$300 or \$600) should be cited here. Children under 14 years of age would be cited for hours violations if they worked in excess of the hours requirements for 14 and 15 year old children.
2. Occupation. Any violation where a child is found employed in an occupation not permissible under the Child Labor Laws of Virginia or regulations adopted pursuant thereto.
 - (1) Under 14. Any child under 14 years of age employed in an illegal occupation, cite \$300 for 1st violation; cite \$600 for 2nd and subsequent violations.

- (2) Under 16 in prohibited occupation. Applicable to any child who is underage for prohibited occupations requiring a 14- 16 year-old-age limit (does not include 16 year old requirement for hazardous agricultural employment). If a 1st violation, cite \$200 if no injury occurred, \$400 if injury but no significant injury occurred, and \$1000 if fatality or significant injury occurred. If 2nd or subsequent violation, cite \$400 if no injury occurred, \$600 if injury but no significant injury occurred, and \$1000 if fatality or significant injury occurred.
- (3) Under 16/18 in hazardous occupation or using hazardous equipment. Any child that is not the minimum age (16 or 18) for hazardous agricultural employment or using hazardous farm equipment or a child under 18 employed in a hazardous non-agricultural occupation or using hazardous equipment are cited here. If minor was under 14, it is appropriate to cite violations of B.2(1) as well as this section. If 1st violation, cite \$400 if no injury occurred, \$600 if injury but not significant injury occurred, and \$10,000 if fatality or significant injury occurred. If 2nd or subsequent violation, cite \$600 if no injury occurred, \$800 if injury but no significant injury occurred, and \$10,000 if fatality or significant injury occurred.

Note: For the purpose of this section, significant injury means if there is a permanent disability suffered. For example, loss of finger, loss of limb, permanent vision damage, permanent nerve damage, permanent burn scars, etc.

- (4) Subjected to recognized hazard. Before citing a penalty for violation of § 40.1-100.1, you should discuss the case with your Supervisor, who will discuss it with the Central Office. If 1st violation, cite \$400 if no injury occurred, cite \$600 if injury but not significant injury occurred, and \$10,000 if fatality or significant injury occurred. If 2nd or subsequent violation, cite \$600 if no injury occurred, \$800 if injury but no significant injury occurred, and \$10,000 if fatality or significant injury occurred.

3. Total the amount of penalty for each child and place that amount in "Section I Subtotal."

C. SECTION II 50% REDUCTION IF NONE OF THE FOLLOWING OCCURRED:

If any of the (1) through (4) subsection tests are not met, the 50% reduction is eliminated. The Representative must find evidence that one of the four tests is not met in order to void the reduction. Place either "Yes" or "No" by each test. Any "Yes" voids the reduction.

1. Injury/potential injury. Employer fails this test if child was employed in an illegal occupation or was using hazardous equipment and injury occurred or potential for injury existed.

2. Repeat violation. If this investigation is with the same employer (corporation) you've cited any violations of Chapter 5 of Title 40.1, Code of Virginia, or regulations adopted pursuant thereto in the past, the test is not met.
3. Child under 14 employed. Employer fails this test if any violation is found where the child involved is under 14 years of age.
4. Hours substantially exceeded. Employer fails this test if minor worked three days or more and either one of the following has occurred:
 - (1) One hour or more prior to the 7 a.m. beginning or 7 and 9 p.m. ending limits.
 - (2) One hour or more over the daily limits.
 - (3) Six hours or more over the weekly limit.
 - (4) No meal or rest period given.
 - (5) Working illegally during school hours.

If the penalty amount is not reduced because one of the 1 through 4 tests is not met, bring down the "Section I Subtotal" to "Section II Subtotal." If the penalty is reduced because all of (1) through (4) tests are met, reduce the "Section I Subtotal" for the appropriate child by 50% and place the reduced figure in "Section II Subtotal" space for each child.

- D. Section III FAILURE TO OBTAIN PROPER CERTIFICATION. This section is used to cite employers for failure to have an Employment Certificate, Work-Training Agreement, or Theatrical Permit whichever is applicable. If proper certification was not obtained, cite \$300 for 1st offense and \$600 for each 2nd and subsequent offense. (If the child is under 14 which is the minimum age for securing an Employment Certificate, no penalty should be assessed. However, if the child turns 14 years of age and remains in the employer's employment and still does not secure an Employment Certificate, a penalty should be assessed for failure to obtain proper certification.)

If a penalty is cited in "Section III," place the penalty in the column for each child cited. Add these penalty amounts to the amounts of the "Section II Subtotal" line and enter the totals on the "Section III Subtotal" line.

- E. Section IV. REDUCTION. If the total number of employees for the establishment is between 1 and 4, reduce the Section III Subtotal by 50%; between 5 and 10, reduce the penalty by 40%; between 11 and 25 employees, reduce the amount by 30%; between 26 and 60 employees, reduce the amount by 20%; between 61 and 100 employees, reduce the amount by 10%; or 100 or more employees, no reduction is to be made in the Section III Subtotal amount. Enter the appropriate reduction amount here, if any, and draw a line under the reduction test which is met. Place the remaining penalty amount on the

"Section IV Subtotal" line. If there is no reduction, merely bring the "III" totals down to the "IV" totals.

Note: The number of employees is to be based on the number of employees the employer has on the date the Representative conducts the investigation.

- F. Section V. FAILURE TO KEEP PROPER TIME RECORDS. This section is used for citing any violation of § 40.1-81.1 of the Child Labor Laws, or regulations adopted pursuant to § 40.1-6(3) of the Code of Virginia. If 1st violation, cite \$300 if the employer has no records, \$75 if the records are insufficient, and \$50 if the records are not on the premises. If 2nd or subsequent violation, cite \$500 if the employer has no records, \$250 if records are insufficient, and \$100 if records are not on the premises. Total the amounts on the "Section IV Subtotal line and the "Section V FAILURE TO KEEP PROPER TIME RECORDS" line and bring the totals down to the "Total Civil Money Penalty" line.
- G. Finalization of Civil Money Penalty Form:
1. Total all children cited on this form and place the number of children in "Number of Children illegally employed" at the top right of form.
 2. Total the amounts listed in the "Total Civil Money Penalty" line and place the grand total in "Recommended penalty amount" at the top right.
 3. Put the Representative's name in the block in the lower left corner. If more than one Representative works on this investigation, all names should appear here.

Section 11.00 Application

- A. Child labor complaints can originate in the following ways:
1. Receipt of a formal or anonymous complaint by phone, by walk-in, or other method where no written paperwork is furnished.
 2. First Report of Injury form from the Industrial Commission.
 3. Violations noted as a result of a routine inspection.
 4. Other referrals.
- B. Conducting interviews during a child labor investigation.
1. If an investigation is conducted as a result of a formal or anonymous complaint, the representative will interview the complainant if the complainant is known, interview management, and review records for all currently employed minors to determine if violations are noted. If use of hazardous equipment and/or prohibited occupations is alleged or suspected, all currently employed minors may be interviewed. If records are not maintained for 14 and 15 year olds, interviews may be necessary to determine if work hours are being violated. Former employees will not be interviewed unless their testimony is needed to substantiate violations cited for current employees. Penalties will be calculated based on all violations cited.
 2. If an investigation is conducted as a result of an injury report, the representative may interview management, interview all currently employed minors, interview the injured party, and review necessary records of the injured and currently employed minors to determine if violations are noted. The OSHA 200 log may be reviewed, if available, to determine if other injuries occurred during the last 12 months. The injured party is the only former employee to be interviewed unless the testimony of other former employees is needed to substantiate violations cited in relation to the injury or for current employees. Penalties will be calculated based on all violations cited.
 3. When a routine inspection is conducted, the representative will review records for all currently employed minors, observe the work being conducted by minors, and thoroughly instruct the employer about Virginia's labor laws. Employee interviews will not be conducted. All violations observed during the inspection will be noted. Penalties will be calculated based on all violations cited.

Note: If an employer indicates during the inspection that minors have used hazardous equipment due to the employer's lack of knowledge of the law, but the representative does not observe a violation, a warning will be issued and a follow-up inspection may be scheduled within 3 months.

If a minor is observed operating a hazardous piece of equipment, a penalty will be calculated for that incidence only. If the employer has other minors employed who he admits have operated this equipment, a follow-up inspection should be scheduled within 3 months. If violations are noted on the follow-up visit, a full investigation to include interviews of all minors would be conducted. Penalties will be calculated on all violations cited.

C. Citations

1. **Penalty Assessment:** The notification is sent to the employer by both regular first class and certified mail.
2. **Final Order:** The Commissioner shall notify any employer who he alleges has violated any provision of this section by certified mail or overnight delivery service. Such notice shall contain a description of the alleged violation. Within 21 days of receipt of notice of the alleged violation, the employer may request an informal conference regarding such violation with the Commissioner. If the employer fails to contest the violation by requesting such an informal conference within 21 days following receipt of the notice of the alleged violation, the violation and proposed penalty will become a final order of the Commissioner and not subject to review by any court or agency except upon a showing of good cause. Such informal conference shall result in a decision by the Commissioner that will be appealable to the appropriate circuit court. The Department shall send a copy of the Commissioner's decision to the employer by certified mail or overnight delivery service. The employer may file a notice of an appeal only within 30 days from the receipt of the decision. The appeal shall be on the agency record. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to ascertaining whether there was substantial evidence in the record to reasonably support the Commissioner's findings of fact.