

CHAPTER 58 CHILD LABOR

Authority

N.J.S.A. 34:1-20, 34:1A-3(e), 34:11-56a19, 34:2-21.1 et seq., specifically 34:2-21.64 and 34:2-21.57 et seq.

Source and Effective Date

R.1995 d.549, effective September 22, 1995.
See: 27 N.J.R. 2873(a), 27 N.J.R. 3962(b).

Executive Order 66(1978) Expiration Date

Chapter 58, Child Labor, expires on September 22, 2000.

Chapter Historical Note

Chapter 58, Child Labor (formerly "Child Labor Law"), was filed and became effective prior to September 1, 1969. Former Chapter 58, "Child Labor Law," was repealed and replaced by new rules by R.1980 d.432, effective November 1, 1980. See: 12 N.J.R. 538(d), 12 N.J.R. 666(e). Pursuant to Executive Order No. 66(1978), Chapter 58 was readopted as R.1985 d.522, effective September 26, 1985. See: 17 N.J.R. 2009(b), 17 N.J.R. 2561(a). Pursuant to Executive Order No. 66(1978), Chapter 58 was readopted as R.1990 d.522, effective September 26, 1990. See: 22 N.J.R. 2241(a), 22 N.J.R. 3383(a). Subchapter 5, Violations and Administrative Penalties, was adopted as new rules by R.1991 d.612, effective December 16, 1991. See: 23 N.J.R. 2944(a), 23 N.J.R. 3811(a). Pursuant to Executive Order No. 66(1978), Chapter 58 was readopted as R.1995 d.549, effective September 22, 1995. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 12:58-1.1 Purpose; scope
- 12:58-1.2 Apprentice and student learner in cooperative vocational education program
- 12:58-1.3 School to Work program

SUBCHAPTER 2. DEFINITIONS

- 12:58-2.1 Definitions

SUBCHAPTER 3. OCCUPATIONS PROHIBITED TO MINORS UNDER 16 YEARS OF AGE

- 12:58-3.1 Scope
- 12:58-3.2 Power driven machinery
- 12:58-3.3 Conveyors and related equipment

SUBCHAPTER 4. OCCUPATIONS PROHIBITED TO MINORS UNDER 18 YEARS OF AGE

- 12:58-4.1 Scope
- 12:58-4.2 Construction work
- 12:58-4.3 Agricultural machinery
- 12:58-4.4 Junk or scrap metal yard
- 12:58-4.5 Disorderly house
- 12:58-4.6 Highly inflammable substances
- 12:58-4.7 Radioactive substances and ionizing radiation
- 12:58-4.8 Carcinogenic substances
- 12:58-4.9 Toxic and hazardous substances
- 12:58-4.10 Compactors
- 12:58-4.11 Circular saws, band saws, and guillotine shears
- 12:58-4.12 Slaughtering and meat packing establishments; rendering plants; wholesale, retail or service establishments

- 12:58-4.13 Corrosive materials
- 12:58-4.14 Indecent or immoral exposure
- 12:58-4.15 Pesticides
- 12:58-4.16 Rim wheels
- 12:58-4.17 Bar service areas

SUBCHAPTER 5. VIOLATIONS AND ADMINISTRATIVE PENALTIES

- 12:58-5.1 Purpose; scope
- 12:58-5.2 Violations of the Act
- 12:58-5.3 Administrative penalties
- 12:58-5.4 Hearings

APPENDIX A. AVAILABILITY OF STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

SUBCHAPTER 1. GENERAL PROVISIONS

12:58-1.1 Purpose; scope

(a) The purpose of this chapter is to define and clarify certain sections of the child labor statutes.

(b) This chapter shall apply to the employment of minors subject to the child labor statutes, except as provided in N.J.A.C. 12:58-1.4.

Amended by R.1990 d.522, effective November 5, 1990.
See: 22 N.J.R. 2241(a), 22 N.J.R. 3383(a).

Recodified from N.J.A.C. 12:58-1.2.

Subsection (b) recodified from N.J.A.C. 12:58-1.3, "Scope."
Deleted former N.J.A.C. 12:58-1.1, "Title and citation."

12:58-1.2 Apprentice and student learner in cooperative vocational education program

(a) This chapter shall not apply to apprentices and student learners that are in a cooperative vocational education program.

(b) "Apprentice" means a person:

1. Employed in a craft recognized as an apprenticeable trade;
2. Whose work in particularly hazardous occupations is incidental to the training;
3. Whose work is intermittent and of short duration and under the direct and close supervision of a craftsman; and
4. Registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor as employed in accordance with the standards established by that Bureau or is registered by a State agency as employed in accordance with the State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, or is employed under a written apprenticeship agreement and

conditions which are found by the Secretary of Labor to conform substantially with such Federal and State standards.

(c) "Cooperative vocational education program" means a program of vocational education approved by the State Department of Education for persons who, through written cooperative arrangements between the school and the employer, receives instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field, but these two experiences are planned and supervised by the school and employer so that each contributes to the education and employability of the student.

(d) "Student learner" means a person:

1. 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;

2. Between the ages of 16 years and 18 years of age;

3. Employed under a written agreement which provides that:

i. Work in a particularly hazardous occupation is incidental to the minor's training;

ii. Work is intermittent and of short duration, and under the direct and close supervision of a qualified and experienced person; and

iii. Safety instruction is given by the school and correlated by the employer with on-the-job training.

4. For whom an individualized training plan of organized and progressive training to be "performed on-the-job" and related school instruction has been developed. Each training plan will contain:

i. Tasks to be performed by the student learner on the job;

ii. A progression of in-school learning experiences that relate to the on-the-job training; and

iii. An outline that identifies safety instruction and occupational competencies to be learned at the training site and in school;

5. For whom training site supervision must be conducted by the school coordinator at intervals not to exceed once every two weeks, to ensure that the student learner is free from exploitation and that a safe training environment is maintained;

6. Who may perform certain permitted hazardous occupations only at those sites registered with the Department of Education/Vocational Division prior to the placement of student learners and on whose employment certificate will be placed the registration number of the site to identify the student as a cooperative education student learner; and

7. For whom training site experiences may not exceed five hours on any day that school is in session nor may the combination of school and work exceed eight hours on any day that school is in session.

Recodified from N.J.A.C. 12:58-1.4 by R.1990 d.522, effective November 5, 1990.

See: 22 N.J.R. 2241(a), 22 N.J.R. 3383(a).

Amended by R.1993 d.183, effective May 3, 1993.

See: 25 N.J.R. 889(a), 25 N.J.R. 1881(a).

Revised (d).

12:58-1.3 School to Work program

Requirements for the School to Work program are found at N.J.A.C. 12:56-18.

New Rule, R.1995 d.549, effective October 16, 1995.

See: 27 N.J.R. 2873(a), 27 N.J.R. 3962(b).

SUBCHAPTER 2. DEFINITIONS

12:58-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Child labor statutes" means N.J.S.A. 34:2-21.1 et seq. and N.J.S.A. 34:2-21.57 et seq.

"Combustible liquid" means any liquid with a flash point from 100 to 200 degrees Fahrenheit as measured by tests or any liquid mixture with 99 percent or more combustible components.

"Commissioner" means the Commissioner of the Department of Labor or his or her designee.

"Corrosive material" means any liquid or solid that causes destruction of human skin tissue or a liquid that has a severe corrosion rate on steel or aluminum.

"Explosive" means any chemical compound, mixture, or device the primary or common purpose of which is to function by explosion, e.g., with substantially instantaneous release of gas or heat unless such compound, mixture or device is otherwise specifically classified.

"Flammable liquid" means any liquid with a flash point less than 100 degrees Fahrenheit as measured by tests with the following exceptions:

1. A flammable liquid with a vapor pressure greater than 40 pounds per square inch absolute at 100 degrees Fahrenheit.

2. A liquid mixture containing one percent or less flammable components.

3. A water-alcohol solution containing 24 percent or less alcohol.

“N.J.A.C.” means the New Jersey Administrative Code.

“N.J.S.A.” means the New Jersey Statutes Annotated.

“Pyroforic liquid” means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit. These liquids are classified as flammable liquids.

Amended by R.1990 d.522, effective November 5, 1990.

See: 22 N.J.R. 2241(a), 22 N.J.R. 3383(a).

Deleted duplicative citations in definitions section, to the New Jersey Administrative Code.

Amended by R.1995 d.549, effective October 16, 1995.

See: 27 N.J.R. 2873(a), 27 N.J.R. 3962(b).

4. An attended or unattended standard type passenger elevator.

Case Notes

Operation of a cardboard baling machine held not to be a prohibited occupation under the child labor rules. *Dubiel v. Laneco, Inc.*, 161 N.J.Super. 360, 391 A.2d 957 (Law Div.1978).

12:58-3.3 Conveyors and related equipment

(a) Minors under 16 years of age shall not be employed, permitted or suffered to work on or about conveyors and related equipment.

(b) “Conveyor” shall mean a horizontal, inclined, or vertical device for moving or transporting bulk materials, packages or objects, in the path predetermined by the design of the device, and having points of loading and discharge.

(c) “Related equipment” shall mean devices in and around conveyors that represent a physical hazard, such as equipment interfaces, nip and shear points, transfer, loading and discharge points, hoppers, and chutes.

SUBCHAPTER 3. OCCUPATIONS PROHIBITED TO MINORS UNDER 16 YEARS OF AGE

12:58-3.1 Scope

(a) This subchapter shall apply to occupations prohibited to minors under 16 years of age, except as provided in (b) below.

(b) This subchapter shall not apply to apprentices and student learners engaged in cooperative vocational education programs.

12:58-3.2 Power driven machinery

(a) Minors under 16 years of age shall not be employed, permitted or suffered to work in, about, or in connection with power-driven machinery.

(b) “Power driven machinery” shall include:

1. Power tools, including but not limited to, power lawn mowers, power woodworking and metal working tools.

(c) “Power driven machinery” shall not include:

1. Standard office type machines;
2. Standard domestic type machines or appliances when used in domestic or business establishments;
3. Agricultural machines when used on farms, such as standard type poultry feeders, egg washers, egg coolers, and milking machines; and

SUBCHAPTER 4. OCCUPATIONS PROHIBITED TO MINORS UNDER 18 YEARS OF AGE

12:58-4.1 Scope

(a) This subchapter shall apply to occupations prohibited to minors under 18 years of age, except as provided in (b) below.

(b) This subchapter shall not apply to apprentices and student learners engaged in cooperative vocational educational programs and the School to Work program.

Amended by R.1995 d.549, effective October 16, 1995.

See: 27 N.J.R. 2873(a), 27 N.J.R. 3962(b).

12:58-4.2 Construction work

(a) Minors under 18 years of age shall not be employed in construction work, except as provided in (b) below.

1. “Construction work” shall mean the erection, alteration, repair, renovation, demolition or removal of any building or structure; the excavation, filling and grading of sites; the excavation, renovation, repair or paving of roads and highways; and any function performed within 30 feet of the above operations.

2. “Construction work” shall not mean the repair or painting of fences, buildings and structures not exceeding 12 feet in height.

3. "Building" means a combination of materials to form a construction that is safe and stable, and adapted to permanent or continuous occupancy for various uses.

4. "Structure" shall mean an assembly of materials forming an object for occupancy or use including among others stadiums, stagings, observation towers, storage tanks, trestles, wharves, boats and ships.

(b) Minors who are age 14 to 17 years of age shall be permitted to work as volunteers for nonprofit organizations engaged in the construction of affordable housing in accordance with N.J.S.A. 34:2-21.17D and 34:2-21.17E. A nonprofit organization as used in this subsection means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under 26 U.S.C. §501(c)(3).

Amended by R.1990 d.522, effective November 5, 1990.
See: 22 N.J.R. 2241(a), 22 N.J.R. 3383(a).

In (b): added phrase, "the excavation ... and highways; ..."
Amended by R.1995 d.549, effective October 16, 1995.
See: 27 N.J.R. 2873(a), 27 N.J.R. 3962(b).

12:58-4.3 Agricultural machinery

(a) Minors under 18 years of age shall not work in, on, or directly in connection with the following agricultural machinery:

1. Cornpickers;
2. Power driven hay balers; or
3. Power field choppers.

12:58-4.4 Junk or scrap metal yard

(a) Minors under 18 years of age shall not be employed in, about, or in connection with a junk or scrap metal yard.

(b) "Junk or scrap metal yard" shall mean any place where old iron, metal, paper, cordage and other refuse may be collected and deposited or both and sold or may be treated so as to be again used in some form or discarded or where automobiles or machines are demolished for the purpose of salvaging of metal or parts.

12:58-4.5 Disorderly house

(a) Minors under 18 years of age shall not be employed in, about or in connection with a disorderly house.

(b) "Disorderly house" means a house of prostitution, a brothel or gambling place.

12:58-4.6 Highly inflammable substances

(a) Minors under 18 years of age shall not be employed, permitted or suffered to work in, about, or in connection with highly inflammable substances.

(b) Any employment certificate authorizing the employment of a minor under 18 years of age in any gasoline service station or garage shall be stamped with the following warning: "The certificate does not in any way affect any prohibition contained in the Child Labor Act concerning power-driven or hazardous machinery or hazardous occupations."

(c) "Highly inflammable substance" shall mean a flammable liquid or a pyroforic liquid, except a "highly inflammable substance" shall not mean gasoline at a service station where gasoline tanks of gasoline motor driven vehicles are filled by use of a hose that is a part of powered pumping equipment.

(d) Minors under 18 years of age shall be prohibited from fueling aircraft, either commercial or private.

Amended by R.1990 d.522, effective November 5, 1990.
See: 22 N.J.R. 2241(a), 22 N.J.R. 3383(a).

In (c): deleted N.J.A.C. citation.

Added new subsection (d).

Amended by R.1995 d.549, effective October 16, 1995.
See: 27 N.J.R. 2873(a), 27 N.J.R. 3962(b).

12:58-4.7 Radioactive substances and ionizing radiation

(a) Minors under 18 years of age shall not be employed, permitted or suffered to work in any workroom where exposed to radioactive substances or to ionizing radiation.

(b) Work where exposed to radioactive substances shall mean work which involves exposure to:

1. Radium is stored or used in the manufacture of self-luminous compounds.

2. Self-luminous compounds are made, processed, or packaged.

3. Self-luminous compounds are stored, used or worked upon.

4. Incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged.

5. Other radioactive substances which are present in the air in average concentrations exceeding 10 percent of the maximum permissible concentrations in the air recommended for occupational exposure by the National Committee on Radiation Protection as set forth in the 40 hour week column of table one of the National Bureau of Standards Handbook No. 69 entitled "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure", issued June 5, 1959.

(c) Work where exposed to ionizing radiation shall mean work which involves exposure to ionizing radiations in excess of 0.5 rem per year.

(c) "Pesticide" means and includes any substance or mixture of substances labeled, designed, intended for or capable of use in preventing, destroying, repelling, sterilizing or mitigating any insects, rodents, nematodes, predatory animals, fungi, weeds and other forms of plant or animal life or viruses on or in living man or other animals. The term

"pesticide" also includes any substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant or plant regulator.

Amended by R.1990 d.522, effective November 5, 1990.
See: 22 N.J.R. 2241(a), 22 N.J.R. 3383(a).

Deleted "in the field" and added "any area" regarding applicators of pesticide.

12:58-4.16 Rim wheels

Minors under 18 years of age shall not be permitted to service single piece or multi-piece rim wheels.

12:58-4.17 Bar service areas

(a) Minors under the age of 18 years of age shall not be employed, permitted or suffered to work serving beverages out of any bar service area.

1. "Bar service area" includes, but is not limited to, outside bars at pools or other recreational facilities.

New Rule, R.1990 d.522, effective November 5, 1990.
See: 22 N.J.R. 2241(a), 22 N.J.R. 3383(a).

SUBCHAPTER 5. VIOLATIONS AND ADMINISTRATIVE PENALTIES

12:58-5.1 Purpose; scope

(a) The purpose of this subchapter is to establish rules to effectuate N.J.S.A. 34:2-21.1 et seq., the New Jersey Child Labor Act (Act), specifically, amended N.J.S.A. 34:2-21.19 which provides sanctions for noncompliance.

(b) The chapter is applicable to the employment of minors subject to the Child Labor Act, N.J.S.A. 34:2-21.1 et seq.

Amended by R.1995 d.549, effective October 16, 1995.
See: 27 N.J.R. 2873(a), 27 N.J.R. 3962(b).

12:58-5.2 Violations of the Act

(a) Violations of the Act shall occur when:

1. An employer obstructs the Commissioner in the performance of the duties of the Commissioner in the enforcement of this chapter; or
2. An employer permits or suffers any minor to be employed or to work in violation of the Act; or
3. Any person who, having under his or her control or custody any minor, permits or suffers him or her to be employed or to work in violation of the Act.

(b) If a defendant acts knowingly, an offense under this section shall be a crime of the fourth degree.

(c) A defendant who violates any provision of this chapter shall be guilty of a disorderly persons offense and, shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000.

1. Each day during which any violation of the act continues shall constitute a separate and distinct offense.

2. The employment of any minor in violation of the Act shall, with respect to each minor so employed, constitute a separate offense.

Amended by R.1995 d.549, effective October 16, 1995.
See: 27 N.J.R. 2873(a), 27 N.J.R. 3962(b).

12:58-5.3 Administrative penalties

(a) As an alternative to, or in addition to, any other sanctions provided for in N.J.A.C. 12:58-5.2, pursuant to N.J.S.A. 34:2-21.1 et seq., when the Commissioner finds that an employer has violated that Act, the Commissioner is authorized to assess and collect administrative penalties in the amounts that follow:

1. First violation—not more than \$250.00;
2. Second and subsequent violations—not less than \$25.00 nor more than \$500.00.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following the receipt of the notice.

1. If a hearing is not requested, the notice shall become a final order upon the expiration of the 15 business days following the receipt of the notice.

2. If a hearing is requested, the Commissioner shall issue a final order upon such hearing and a finding that a violation has occurred.

3. All wages due, fees and penalties shall be paid within 30 days of the date of final order. Failure to pay such wages due, fees and/or penalty shall result in a judgment being obtained in a court of competent jurisdiction.

4. All payments shall be made payable to the Commissioner of Labor, Child Labor Account. All payments shall be made by certified check or money order, or payable in a form suitable to the Commissioner of Labor.

(c) When the Commissioner assesses an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:

1. The seriousness of the violation;
2. The past history of previous violations by the employer;
3. The good faith of the employer;
4. The size of the employer's business; and

5. Any other factors which the Commissioner deems to be appropriate in the determining of the penalty assessed.

Amended by R.1995 d.549, effective October 16, 1995.
See: 27 N.J.R. 2873(a), 27 N.J.R. 3962(b).

12:58-5.4 Hearings

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:58-5.3, the employer shall have the right to a hearing pursuant to (b) below.

(b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty by and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following the receipt of the notice.

(c) All requests for hearing will be reviewed by the Office of Wage and Hour Compliance to determine if the reason for dispute could be resolvable at an informal settlement conference. If the review indicates that an informal conference is warranted, such conference will be scheduled. If a settlement cannot be reached, the case will be forwarded to the Office of Administrative Law for a formal hearing.

(d) The Commissioner shall make the final decision of the Department.

(e) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

(f) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his or her designee may, for good cause shown, re-schedule a hearing.

(g) If the Commissioner does not authorize such a re-scheduled hearing, then the Commissioner shall issue a final agency determination effective upon the date set for the original hearing.

(h) Payment of the penalty is due when a final agency determination is issued.

(i) Upon final order the penalty imposed may be recovered with cost in summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

Amended by R.1995 d.549, effective October 16, 1995.
See: 27 N.J.R. 2873(a), 27 N.J.R. 3962(b).

APPENDIX A

Availability of Standards and Publications

Referred to in this Chapter

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

State of New Jersey
Department of Labor
Division of Workplace Standards
John Fitch Plaza
Trenton, New Jersey

Copies of the referenced standards and publications may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning and are the organizations issuing the standards and publications listed.

CFR	Code of Federal Regulations Copies available from: Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20420
NBS	National Bureau of Standards Copies available from: Superintendent of Documents U.S. Government Printing Office Washington, D.C. 20420
N.J.S.A.	New Jersey Statutes Annotated Copies available from: Office of Wage and Hour Compliance New Jersey Department of Labor CN 389 Trenton, N.J. 08625
	No. and Edition Title
29 CFR Part 1910	General Industry Standards of Occupational Safety and Health Administration of the U.S. Department of Labor
NBS Handbook No. 69-1959	Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure
N.J.S.A. 13:1F-1 et seq.	Pesticide Control Act of 1971