

ARTICLE: Guidance is published on the employment of children

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The Department for Children, Schools and Families (DCSF) has recently published guidance on the employment of children. The guidance is very general since a substantial amount of the regulation in this area is through local byelaws. However, it gives details of the overarching legislation and the model byelaws. It could be an invaluable tool for those working in the hotel industry, where it is often common to employ young people.

The legislation

This area of law is governed by the Children and Young Person's Act 1933 (CYPA) and additional rules in the form of local byelaws. In 1998, the Department of Health published model byelaws, which many councils have followed.

Employment under the CYPA is defined as a person who assists in a trade or occupation for profit. However, the DCSF interprets this to mean with an aim to make a "surplus", which would include unpaid work in a charity shop.

If a child is employed illegally, the employer commits an offence and could receive a fine up to £1,000. In some serious instances however, the fine could be up to £20,000 or even unlimited.

Limits on hours and age

A child may not be employed before 7am or after 7pm, or before the end of a day where the child is at school. If a child missed school for paid or unpaid work, it would be treated as an unauthorised absence. However, byelaws can relax these rules to allow work before school. Reproduced at the end of this note is a table which shows the maximum number of hours a child may be employed for during any given day. A child under 16 cannot be employed for more than four hours without a break of at least half an hour (even if the child has taken shorter breaks before that). A child under the school-leaving age must also have a two week break each calendar year (not school year).

The guidance often refers to children of "school leaving age". A child reaches the school leaving age on the last Friday in June in the school year in which the child has their 16th birthday. This could include children of 15 if their 16th birthday falls in the summer holidays after they leave school. A child under 14 may not be employed, although local byelaws may relax this to allow some 13 year olds to be employed. At the end of this note is a table summarising the hours allowed.

Types of work allowed and prohibited

A child under the school-leaving age is only permitted to do "light work" which is not likely to be harmful to their health, safety, development or attendance at school. Model byelaws do allow children aged 13 to be employed in some kinds of light work, which includes: newspaper delivery, shop work (such as shelf stacking), office work, in a café or restaurant (with restrictions on working in the kitchen – see below) and domestic work in a hotel or other establishment offering accommodation.

Certain types of work are prohibited. For example, a child under 18 cannot be employed for work which is beyond their physical or psychological capacity, work which involves harmful

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exposure to radiation or toxic substances, or any work which involves a risk that cannot be recognised or avoided due to the child's lack of experience or training or attention to safety. An example of this last category would be any employment using sharp knives, such as would be found in a commercial kitchen. The DCSF's view is that such provisions are to apply to cooking and so would not prohibit washing up in an area separate to where food is prepared, collecting meals from the kitchen or returning empty plates to the kitchen.

Separate from the CYPA, the Licensing Act 2003 makes it an offence for a child under 16 to be unaccompanied in premises solely or mainly involved in the sale of alcohol. Further, there are restrictions on children under 18 selling alcohol. However, this is allowed if the alcohol is sold or supplied for consumption with a table meal, which allows children to serve alcohol lawfully in restaurants. Under some byelaws, this could be restricted to selling alcohol which is in a sealed container.

Permits and risk assessments

Byelaws will vary the requirements in this area, so guidance is given in relation to the model byelaws by way of example.

Within a week of employing a child, an employer must provide the following to the local authority:

- Name and address of both employer and child.
- Hours and days the child will work, the occupation, details of task and the workplace.
- A statement by the child's parent that they agree to the employment and that the child is fit to work.
- Details of the school which the child attends.
- A statement that an appropriate risk assessment has been carried out.

If all this is in order, the local authority will provide a permit for the child to work, which can be amended on application or revoked in certain circumstances. If the permit application is refused, the employer must cease employing the child. Should the child be employed without a permit or not in accordance to a permit, the employer's liability insurance is likely to become ineffective, leaving the employer uninsured in the event of an accident.

Employers have a general duty to ensure, so far as reasonably practicable, the health and safety of their employees. In respect of children, the employer must carry out a risk assessment and bear in mind any additional risks which could be posed due to the child's lack of experience or absence of awareness. Such assessments must be carried out before any child under 18 years starts work and copies should be provided to the child's parents. No assessment is required for occasional or short term work in a family undertaking where the work is not harmful or dangerous.

If you would like further information on how such regulation might apply to you, please contact David Hill at dhill@davidsonlarge.com or Lucy Bond at lbond@davidsonlarge.com.

	Daily Limit			Weekly Limit	
	<i>School day</i>	<i>Non-school day (Monday to Saturday)</i>	<i>Sunday (school terms or holidays)</i>	<i>School term</i>	<i>School holidays</i>
<i>Children under 15</i>	2 hours	5 hours	2 hours	12 hours	25 hours
<i>Children aged 15 and over, but under school leaving age</i>	2 hours	8 hours	2 hours	12 hours	35 hours

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