

SPECIAL REPORT

ILLEGALLY EMPLOYED MINORS INJURED ON THE JOB ARE ENTITLED TO DOUBLE BENEFITS UNDER MICHIGAN WORKERS' COMPENSATION LAW

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All Michigan employers who hire teen age employees should be keenly aware of the rules and regulations governing the employment of minor employees. Under Michigan law, an illegally employed minor who sustains an on-the-job injury is generally entitled to double compensation under Michigan's Workers' Compensation law, and insurance will not cover this double claim.

Michigan's Worker's Disability Compensation Act ("WDCA")(M.C.L. § 418.161(1)(l)) provides in relevant part:

Any minor under 18 years of age whose employment at the time of injury shall be shown to be illegal, in the absence of fraudulent use of permits or certificates of age in which case only single compensation shall be paid, shall receive compensation double that provided in this act.

While the WDCA does not define what constitutes illegal employment in the above referenced context, the Michigan courts have spoken on this issue.

In *Demogola v Shellhouse Sawmill*, 226 Mich. App. 483, 574 NW2d 688 (1997), the Michigan Court of Appeals found that the employer's violation of various provisions of the Michigan Youth Employment Standards Act ("YESA") constituted illegal employment and entitled the worker to double Workers' Compensation benefits.

In that case, the Plaintiff employee was a seventeen year old minor who worked in the Defendant employer's Christmas tree harvesting business. The minor's job, which was to drag and load Christmas trees after they had been cut, was not hazardous. However, the minor permanently injured his wrist when hit by a falling tree, totally disabling him.

The court found as a factual matter that minor plaintiff did not have a work permit, worked more than six consecutive days, and worked more than forty-eight hours in some weeks, in violation of the YESA. The YESA, among other provisions, requires work permits for minor employees and limits weekly hours for those employees. The Michigan Court of Appeals held that those violations constituted "illegal employment" under Workers' Compensation law, entitling the juvenile employee to double compensation. The fact that the job was not particularly hazardous was not dispositive because plaintiff's employment was illegal under other statutory provisions of the YESA.

Similarly, in *Field v. Jack & Jill Ranch*, 343 Mich. 273, 280, 72 N.W.2d 26 (1955), the Michigan Supreme Court determined that it was appropriate to refer to the juvenile employment act (which preceded the YESA) to determine whether a minor was legally employed. That act prohibited the employment of a minor without a work permit and prohibited employment of minors in unduly hazardous occupations.

The Michigan Court of Appeals reached a similar conclusion in the 1979 case of *Priggett v. Detroit*, 94 Mich. App. 402, 288 N.W.2d 441 (1979). In that case, the Court of Appeals found that the plaintiff was illegally employed because of the defendant's failure to secure proper work permits pursuant to the juvenile employment act, thus entitling plaintiff to double compensation under the Workers' Compensation act.

The double Workers' Compensation penalty does not apply where the minor fraudulently uses permits or certificates of age. However, it should be noted that the Michigan Supreme Court, in *Halfacre v Paragon Bridge & Steel Co*, 368 Mich 366, 118 NW2d 455 (1962), found that where a minor intentionally misrepresents his or her age, without fraudulent use of permits or certificates of age, the minor is still entitled to double benefits under the Workers' Compensation law.

Because, as illustrated above, Michigan courts have determined that violations of the Michigan's YESA constitute illegal employment under Michigan's WDCA, it is important for employers to have a thorough understanding their obligations with regard to employment of minors. Employers should be careful to understand the specifics of the youth employment rules.¹ Generally, however, a minor must be at least fourteen years old for most occupations unless exempt from the YESA. A work permit is required unless the minor is exempt from the act. Minors may be employed in most jobs except those considered hazardous. Minors may only work certain hours. Workers under eighteen years of age may not work more than five hours without a thirty minute uninterrupted break.

Proper recordkeeping is essential in order to maintain compliance with the YESA. Employers must maintain copies of work permits or verification of exemption from the Act, records of the number of hours a minor works each day, including starting and ending times and meal/break periods.

This publication is general in nature and is not intended to be legal advice. It should not be used as a sole source of guidance. Specific legal consultation with attorneys knowledgeable in the area of employment law is recommended.

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¹ The Michigan Department of Labor & Economic Growth, Wage and Hour Division, offers useful publications on this topic: *Employing Minors in Michigan* can be obtained online at: http://www.michigan.gov/documents/Brochure_90_89260_7.pdf.