U.S. Department of Labor
Wage and Hour Division
Washington, D.C. 20210

U.S. Wage and Hour Division

July 13, 2011

FIELD ASSISTANCE BULLETIN No. 2011-3

MEMORANDUM FOR: REGIONAL ADMINISTRATORS
AND DISTRICT DIRECTORS

FROM: NANCY J. LEPPINK
Acting Administrator

SUBJECT: Assisting in the Operation of Power-Driven Patient/Resident Hoists/Lifts Under the Child Labor Provisions of the Fair Labor Standards Act

The Department of Labor's Wage and Hour Division (WHD) is responsible for administering the Fair Labor Standards Act (FLSA), the federal law of most general application concerning wages, hours of work and child labor. The child labor provisions of the FLSA were enacted to ensure that when children work, the work is safe and does not jeopardize their health, well-being, or education. To protect children from hazardous employment, the FLSA provides for a minimum age of 18 years in occupations found and declared by the Secretary of Labor to be particularly hazardous or detrimental to the health or well-being of children 16 and 17 years of age. Hazardous Occupations Orders (HOs) are the means by which the Secretary declares certain occupations to be particularly hazardous for children.

Child Labor Hazardous Occupations Order No. 7 (*Occupations involved in the operation of power-driven hoisting apparatus)* (HO 7) (29 CFR § 570.58) has for many years prohibited children under 18 years of age from operating or assisting in the operation of several types of hoisting apparatus. This HO is quite broad and covers all types of hoists in all types of employment settings. Prior to July 2010, however, HO 7 included an exemption that permitted children to operate electric and air operated hoists that did not exceed a one-ton capacity. This one-ton threshold resulted in the exclusion of patient/resident hoists/lifts from the scope of the HO.

In 1998, WHD commissioned the National Institute for Occupational Safety and Health (NIOSH) to conduct a review of all then existing HOs and to make recommendations on how WHD could more fully meet its obligation to protect children without preventing them from engaging in positive employment experiences that could be performed safely and without undue risk. In its report entitled *National Institute for Occupational Safety and Health (NIOSH)*

Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders issued in July of 2002, NIOSH recommended revisions to HO 7, including the removal of the exemption for electric and air hoists that did not exceed a one-ton capacity. NIOSH also recommended that WHD prohibit children from repairing, servicing and disassembling the power-driven machines and from assisting in tasks being performed by the power-driven machines covered by HO 7. On April 17, 2007, WHD issued a Notice of Proposed Rulemaking (NPRM) that, among many other things, proposed to adopt these NIOSH recommendations. As noted in the NPRM, the Department's rulemaking was informed in part by a statement from the NIOSH report that "[a] hoisted load weighing less than one ton has the potential to cause injury or death as a result of falling, or being improperly rigged or handled." *See* 72 Fed. Reg. 19352; NIOSH Report at p. 38.

WHD received three comments on this section of the NPRM. The three comments supported all aspects of the proposal and suggested additional strengthening and clarification of HO 7. No commenters opposed the proposed changes. WHD issued a Final Rule on May 20, 2010, which adopted the NIOSH-recommended changes to HO 7 and made further slight clarifications based upon the comments received. *See* 75 Fed. Reg. 28404, 28434 (May 20, 2010). As of July 19, 2010, the effective date of the Final Rule, the revised HO 7 prohibits children under the age of 18 years from operating or assisting in the operation of power-driven hoists/lifts in any setting. This prohibition includes power-driven hoists/lifts used to elevate and transport patients/residents in hospitals, nursing homes, and residences. Prohibited equipment includes floor-based vertical powered patient/resident lift devices; ceiling-mounted vertical powered patient/resident lift devices; and powered sit-to-stand patient/resident lift devices.

WHD has received several inquiries about the revised HO 7 as it relates to patient/resident hoists/lifts and has reviewed the issues raised in those inquiries. Many of the inquiries express concerns about the business need to staff health care facilities with 16- and 17-year-olds, the continued success of nursing aide education programs, and the future careers of children. Although WHD appreciates these concerns, when children ages 16 and 17 are employed, WHD has a statutory obligation under the FLSA to ensure that the work is not hazardous or detrimental to their health or well-being. WHD notes that the Survey of Occupational Injuries and Illnesses (SOII) administered by the Department of Labor's Bureau of Labor Statistics reports that in 2009 the occupation of *nursing aides, orderlies and attendants* (all ages) experienced a risk of lost work-time injuries that was almost four times greater than the rate for all public and private establishment workers (455.6 injuries per 10,000 full-time workers vs. 117.2 injuries per 10,000 full-time workers) (available at http://www.bls.gov/iif/oshsum.htm). Anne L. Mardis and Stephanie G. Pratt also reported that in 1997 the risk of a lost work-time injury per full-time equivalent for children ages 16 and 17 was roughly three times higher in health services

than in eating and drinking establishments, food stores, and business establishments. Over 50% of the injured health service workers in that study were either health or nursing aides.[1]

Because of the concerns raised in the inquiries it received, WHD asked NIOSH to study the particular risks for 16- and 17-year-olds operating and assisting in the operation of patient/resident hoisting/lifting devices to assist WHD in its review of what, if any, tasks 16- and 17-year-olds could safely perform. NIOSH has completed its study and it, along with the cover letter to WHD, is available on the WHD Web site at http://www.dol.gov/whd/childlabor.htm. Based on its review of the scientific literature and biomedical analyses, NIOSH concluded that "[m]any 16- and 17-year-old employees cannot safely operate power-driven patient lifts to lift and transfer patients *by themselves* (emphasis in the original), although they may be able to safely work as part of a team to assist another experienced caregiver who is 18 years of age or older to transfer or move a patient/resident."[2] In particular the NIOSH review found that "many 16- and 17-year-old workers do not have the physical strength required to 1) independently manipulate patients/residents when placing slings under them, and 2) safely push, pull, or rotate a portable hoist on wheels when loaded with a patient/resident." In addition the NIOSH review found that "working youth greatly underestimate the dangers associated with tasks known to be hazardous." Further, NIOSH stated that "specific training alone is not sufficient to protect young workers from patient-lifting related injuries." Finally, NIOSH recommended that federal child labor laws prohibit children from manually lifting patients/residents, as manual lifting has been shown to have a greater risk for low back injuries than the use of power-driven hoists for patient/resident lifts.

WHD appreciates NIOSH's assistance and its recognition that establishing parameters that ensure 16- and 17-year-olds can safely assist a trained adult worker in the operation of patient/resident hoisting/lifting devices is complex. WHD intends to continue to gather information on this important issue.

While continuing its review of this issue, WHD will exercise its enforcement discretion, and not assert child labor violations involving 16- and 17-year-olds who assist a trained adult worker, as described below, in the operation of floor-based vertical powered patient/resident lift devices, ceiling-mounted vertical powered patient/resident lift devices, and powered sit-to-stand patient/resident lift devices (lifting devices). Child labor violations will not be asserted by WHD only when all of the following conditions are met:

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[1] Mardis, A and Pratt, S, [2003]. Nonfatal Injuries to Young Workers in the Retail Trades and Services industries in 1998. Journal of Occupational and Environmental Medicine. Volume 45, Number 3, pages 316-323.

[2] NIOSH also reviewed powered tuggers and equipment movers—motorized equipment that can be attached to beds and various heavy equipment to make them easier to move and transport. Although this information is important, HO 7 does not prohibit the employment of 16- and 17-year-olds to operate or assist in the operation of such powered-tuggers and equipment movers.

(1) The child (16- or 17-year-old) has successfully completed the 75 clock hours of nurses aide training required by the Federal Nursing Home Reform Act from the Omnibus Budget Reconciliation Act of 1987, as outlined in 42 CFR § 483.152, or a higher state standard where applicable, and has successfully completed the nurses aide competency evaluation detailed in 42 CFR § 483.154, or a higher state standard where applicable.[3]

(2) The child is not operating by himself or herself floor-based vertical powered patient/resident lift devices, ceiling-mounted vertical powered patient/resident lift devices, and powered sit-to-stand patient/resident lift devices (lifting devices) and the child is assisting in the use of lifting devices as a junior member of at least a two-person team that is headed by an employee who is at least 18 years of age. All members of the team must be trained in the safe operation of the lifting devices being used.

(3) As a junior member of the team, the child may set up, move, position, and secure unoccupied lifting devices. The child may assist trained adult employees in attaching slings to and un-attaching slings from lifting devices prior to and after the lift/transfer of the patient/resident is completed. The child may also assist trained adult employees in operating the controls that activate the power to lift/transfer the patient/resident. The child may act as a spotter/observer and may position items such as a chair, wheelchair, bed, and commode under the patient/resident who is being lifted/transferred.

(4) As a junior member of the team, the child may not independently engage in "hands on" physical contact with the patient/resident during the lifting/transferring process (such as placing or removing the sling, including pushing or pulling the sling under/around the patient/resident; adjusting the sling under/around the patient/resident; and manipulating the patient/resident when placing, adjusting or removing a sling under/around the patient/resident), and may only assist in these "hands on" activities when assisting a trained adult employee while the adult employee is simultaneously engaged in such activities. The child may similarly assist a trained adult employee who is manipulating, guiding, rotating, or otherwise maneuvering the patient while the patient is being lifted/transferred. In addition, the child may similarly assist a trained adult employee who is pushing, pulling or rotating lifting devices when the device is engaged in the process of lifting/transferring a patient/resident.

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[3] WHD will not assert a violation of HO 7 when 16- and 17-year-olds engage in the limited operation of patient lifts as required by this nursing aide training.

(5) The child is not injured while operating or assisting in the operation of a lifting device.

(6) The employer has provided to each child (16- and 17-year-old) employee who will assist in the operation of lifting devices a copy of the document that is being forwarded with this Field Assistance Bulletin as Attachment A.

The above enforcement position will not apply when WHD determines that a 16- or 17-year-old employee has assisted in the operation of a power-driven patient/resident lifting device and the employer and the child have not complied with all of the requirements discussed in paragraphs 1 through 6 above. In such instances, WHD will charge appropriate child labor violations and the employer will be subject to the assessment of child labor civil money penalties as permitted by FLSA section 16(e)(1).

As noted in paragraph 5 above, this enforcement policy is also not applicable if a child is injured while operating or assisting in the operation of power-driven patient hoists/lifts. If a child is injured while engaged in such activities, even if the child was employed in compliance with this nonenforcement policy, WHD will generally charge a violation of HO 7 and assess a civil money penalty. Notwithstanding this enforcement policy, WHD will investigate reports of children being injured while assisting in the operation of power-driven patient hoists/lifts, as well as complaints that the employer has not complied with the requirements in paragraphs 1 through 6 above.

This enforcement position will allow WHD to continue to study this issue. WHD believes that the conditions under which 16- and 17-year-olds will be permitted to assist in the operation of power-driven patient/resident lifting devices as set out herein are consistent with the Department of Labor's stated goal of balancing the potential benefits of transitional, staged employment opportunities for children with the necessary protections for their education, health and safety.

Child Labor Regulations No. 3, contained in subpart C of 29 CFR part 570, addresses the employment of 14- and 15-year-olds in nonagricultural employment. Section 570.34 details the occupations that may be performed by children 14 and 15 years of age. Pursuant to § 570.32, employment that is not specifically permitted is prohibited. It is important to note that the occupations of health care worker, orderly, nursing assistant/attendant, and nursing aide are not specifically permitted by § 570.34 and therefore may not be performed by children under the age of 16 years.

Attachment

cc: Regional Child Labor Coordinators

U.S. Department of Labor
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Attachment A

Assisting in the Operation of Power-Driven Patient/Resident Hoists/Lifts Under the Child Labor Provisions of the Fair Labor Standards Act

The federal child labor provisions, administered by the U.S. Department of Labor's Wage and Hour Division (WHD), were enacted to ensure that when young people work, the work is safe and does not jeopardize their health, well-being, or education. To protect young workers, federal law directs the Secretary of Labor to prohibit the employment of anyone under the age of 18 in any industry or to perform any task that is determined to be particularly hazardous or detrimental to youth.

One such prohibited task involves the operation of power-driven hoists. Although Child Labor Hazardous Occupations Order No. 7 (*Occupations involved in the operation of power-driven hoisting apparatus)* (HO 7) (29 CFR § 570.58) prohibits employees under 18 years of age from operating or assisting in the operation of power-driven hoists, the WHD will not charge a child labor violation when a 16- or 17-year-old employee assists a trained adult employee who is over the age of 18 years in the operation of floor-based vertical powered patient/resident lift devices, ceiling-mounted vertical powered patient/resident lift devices, or powered sit-to-stand patient/resident lift devices when certain specific requirements have been met. Such lifts are often used in hospitals, nursing homes, and residences.

Your employer has identified you as a 16- or 17-year-old employee who may be called upon to assist in the lifting of a patient or resident using a power-driven lifting device. You can play an important role in executing safe and compliant patient/resident lifts and protecting your own health by being fully aware of what tasks you may and may not perform.

After you have successfully completed the 75 clock hours of nurses aide training required by the Federal Nursing Home Reform Act from the Omnibus Budget Reconciliation Act of 1987, or a higher state standard where applicable, and have successfully completed the nurses aide competency evaluation detailed in the federal regulation found at 42 CFR § 483.154, or a higher state standard where applicable, you may perform the following tasks while assisting an adult employee in the operation of power-driven patient/resident lifting devices:

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Attachment A

- You may set up, move, position, and secure unoccupied lifting devices by yourself.
- You may only assist in the lifting or transferring of patients/residents using power-driven hoist or lifts as part of a trained team that is led by an adult employee. You may never engage in such activities by yourself until you are at least 18 years of age.
- As the junior member of the lifting team, you may assist a trained adult employee while he or she is engaged in attaching slings to and un-attaching slings from lifting devices prior to and after the lift/transfer of the patient/resident is completed.
- You may assist a trained adult employee in operating the controls that activate the power to lift/transfer the patient/resident.
- You may act as a spotter/observer and may position items such as a chair, wheelchair, bed, and commode under the patient/resident who is being lifted/transferred.
- You may assist a trained adult employee when he or she is simultaneously engaged in "hands on" physical contact with the patient/resident during the lifting/transferring process, such as placing or removing the sling, including pushing or pulling the sling under/around the patient/resident; adjusting the sling under/around the patient/resident; and manipulating the patient/resident when placing, adjusting or removing a sling under/around the patient/resident.
- You may assist a trained adult employee while the adult employee is simultaneously engaged in manipulating, guiding, rotating or otherwise maneuvering the patient while the patient is being lifted/transferred.
- You may assist a trained adult employee while the adult employee is simultaneously pushing, pulling or rotating lifting devices when the device is engaged in the process of lifting/transferring a patient/resident.
- You may only assist in the "hands on" activities discussed above and may not engage in them by yourself.

Remember, until you are 18-years-old, you may not operate any floor-based vertical powered patient/resident lift devices, ceiling-mounted vertical powered patient/resident lift devices, or powered sit-to-stand patient/resident lift device by yourself.

If you have any questions about these requirements, are being asked to operate or assist in operating powered patient/resident lift devices in manner that is not in compliance with these requirements, or are injured while operating or assisting in the operation of a patient/resident lift device, call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4US-WAGE (1-866-487-9243). Your identity will be kept confidential to the maximum extent possible under existing law.

For more information about the safe operation of patient/resident lifts, the federal child labor provisions, or any other labor standards administered by the WHD, please visit the WHD Web site: http://www.wagehour.dol.gov and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4US-WAGE (1-866-487-9243).