U.S. LABOR DEPARTMENT WITHDRAWS PROPOSED RULE DEALING WITH CHILDREN WORKING IN AGRICULTURE

The U.S. Department of Labor recently withdrew a proposed rule dealing with children under the age of 16 who work in agricultural vocations.

The department published and invited public comments on its proposed rule on child labor in agriculture on September 2, 2011. The proposed rule aimed to increase protections for children working in agriculture while preserving the benefits that safe and healthy work can provide. The Wage and Hour Division was driven to update its 40-year-old child labor regulations by studies showing that children are significantly more likely to be killed while performing agricultural work than while working in all other industries combined. The department’s child labor in agriculture statutory authority extends only to children employed in agriculture who are 15 years of age or younger.

“The Obama administration is firmly committed to promoting family farmers and respecting the rural way of life, especially the role that parents and other family members play in passing those traditions down through the generations. The Obama administration is also deeply committed to listening and responding to what Americans across the country have to say about proposed rules and regulations.”

The decision to withdraw this rule, “was made in response to thousands of comments expressing concerns about the effect of the proposed rules on small family-owned farms.”

All across America children 14 and older have gone to work in the last few weeks and they need our help to keep them safe. For information on child labor issues, call the Arkansas Department of Labor 501-682-4500.

NEW STUDY FINDS OSHA INSPECTIONS REDUCE WORKER INJURIES --- WHILE SAVING EMPLOYERS MONEY

IT’S OFFICIAL: OSHA doesn’t kill jobs. It stops jobs from killing workers.

A landmark new study by business school economists at the University of California and Harvard University confirms that OSHA’s inspections not only prevent workers from getting hurt on the job, they also save billions of dollars for employers through reduced workers' compensation costs.

The study, entitled “Randomized Government Safety Inspections Reduce Worker Injuries with No Detectable Job Loss,” appeared in the top scientific journal Science and reports that workplace injury claims dropped 9.4% at businesses in the four years following a randomized OSHA inspection, compared with employers who were not inspected. Those same employers also saved an average of 26% on workers' compensation costs, compared to similar companies who were not inspected. This means that the average employer saved $355,000 (in 2011 dollars) as a result of an OSHA inspection. Benefits were observed among both small and large employers. Nationwide, these savings to employers amount to an estimated six billion dollars.
Q: My employer wants to pay everyone by direct deposit. Do I have to agree to this?
A. Employers are allowed to pay by direct deposit, provided that employees can "opt out" if they wish and be paid by check. The employee must do so by written request. Any fees associated with direct deposit could trigger minimum wage concerns if the fees drop an employee below the applicable minimum wage. Ark. Code Ann. § 11-4-402

Q. I am required to take a drug test as part of my job. Do I have to pay for that?
A: Generally, no employer can require any employee or applicant for employment, as a condition of employment or continued employment, to submit to or take a physical or medical examination unless the examination is provided at no cost to the employee or applicant for employment. There is an exception to this rule for an employee who has failed a drug test. In those cases, the employer and employee can agree in writing who will bear the cost of future drug test or screens required as a condition of employment. Ark. Code Ann. § 11-3-203

Q. What's the difference between an independent contractor and an employee?
A: It is common misconception that anyone can simply be classified as an independent contractor rather than an employee, either by decision of the principal or by agreement of the parties.

There is a list of factors the Arkansas Supreme Court has established to determine independent contractor/employee status. Generally from an employer's perspective, this can be simplified as "more control, more like an employee -- less control, more like an independent contractor." Each case is different and has to be reviewed based on the specific facts and practices of the employer/principal. Here are the factors:

(a) the extent of control which, by the agreement, is exercised over the details of the work performance;
(b) whether or not the one employed is engaged in a distinct occupation or business;
(c) the kind of occupation, with reference to whether in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
(d) the skill required in the particular occupation;
(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
(f) the length of time for which the person is employed;
(g) the method of payment, whether by the time or by the job;
(h) whether or not the work is a part of the regular business of the employer;
(i) whether or not the parties believe they are creating an employment relationship, and
(j) whether the worker has his/her own business.

Improper classification of employees as independent contractors can have significant ramifications. This difference can be very important for the federal and state agencies that receive the typical required deductions: federal tax, state tax, social security, unemployment, and worker's compensation. These agencies have rules for employer withholdings from employees. Here are the most common agencies involved:

- Internal Revenue Service: www.irs.gov or (501) 324-5111
- Arkansas Department of Finance and Administration Revenue Division: www.dfa.arkansas.gov or (501) 682-2242
- Social Security Administration: www.ssa.gov or 1-800-772-1213
- Arkansas Workforce Services: www.dws.arkansas.gov or (501) 682-3200
- Arkansas Worker's Compensation: www.awcc.state.ar.us or 1-800-250-2511

Additionally, minimum wage, overtime, and child labor laws generally apply to employees, not independent contractors. These issues are enforced by the Arkansas Department of Labor (www.labor.ar.gov and (501) 682-4500) and the United States Department of Labor (www.dol.gov and (501) 223-9114).

This is not a comprehensive list. If you are concerned about your status as an employee vs. independent contractor, you may contact any of the agencies above for general information.
For the second year in a row, OSHA is placing special emphasis on heat stress awareness for employers and employees working in hot environments, both indoors and outdoors.

This year’s heat illness prevention campaign communicates guidance using the words: water, rest, and shade. Drinking water often, taking breaks, and limiting time in the heat can help prevent heat illness, along with gradually acclimating workers to working in the heat a little at a time. It’s also important to know and look out for the symptoms of heat illness. For heat exhaustion, look for signs of dizziness, headache, sweaty skin, weakness, cramps, nausea, and rapid heart beat. For heat stroke, look for red, hot, dry skin, high body temperature, confusion, convulsions, and fainting. And finally, employers and employees should plan for an emergency and know what to do — acting quickly can save lives!

The Bureau of Labor Statistics reported 4,190 workers suffered heat related illnesses in 2010, and 40 died from heat stroke on the job.

OSHA is making a variety of educational materials available to help train employers, employees, and the public on heat related hazards. These resources can be accessed at http://www.osha.gov/SLTC/heatillness/index.html. The agency has developed easy-to-understand materials that are available in English and Spanish. There are a variety of items available including quick cards on heat stress and prevention tips, booklets, lesson plans, DVDs, laminated posters, and fact sheets. Two newer materials available on the heat stress website include OSHA’s Heat Safety Tool Smartphone App and the Employer Guide to Using the Heat Index.

It is vital that employers be proactive and concentrate their efforts on preventing the occurrence of serious heat-related incidents. Employers are advised to closely monitor employees working in hot environments. Also, they are encouraged to give special attention to these areas: drinking water often, resting to cool down, early reporting of heat symptoms and knowing when to seek emergency assistance.

As the outdoor temperatures rise, everyone should be alert to preventing heat related illnesses, and remember: water, rest, and shade.

CARGILL PORK FEED MILL RECOGNIZED FOR 31 YEARS ACCIDENT-FREE

Director of Labor James L. Salkeld recently awarded Cargill Pork Feed Mill located in London, Arkansas a Thirty-One Accumulative Year Safety Award.

The nine employees at Cargill have accumulated thirty-one years without a lost day away from work due to a work-related injury or illness between June 1980 and June 2011. The company has a safety program in effect and a committee made up of both management and employees.

Congratulations, Cargill, on this outstanding accomplishment!
The Arkansas Department of Labor, the U.S. Department of Labor’s Arkansas Area Office, and the Arkansas Home Builders Association are making plans to provide training seminars for the construction industry later this year. These training conferences will be conducted in several areas throughout Arkansas, with Little Rock, Bentonville, Jonesboro and Texarkana currently being considered.

Safety and health topics planned for these conferences include, but are not limited to:

- Fall protection
- Electrical safety
- Walking/working surfaces
- Scaffolding
- Personal protective equipment
- Emergency procedures/heat stress

For more information on these seminars, contact Supervisor Tonia Cooper at 501-682-4527 or email cooper.tonia@dol.gov.

WORKWISE

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James L. Salkeld, Director  •  Jeanette Donahue, Editor

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