

# Am I Following the Law with Minor Employees and Volunteers?



Special Considerations  
for Your "Young"est  
Workers



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# Mission of Pro Bono Partnership of Atlanta

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To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

# Client Criteria

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In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.

Visit our website at [www.pbpatl.org](http://www.pbpatl.org) to apply.

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# Legal Information

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This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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# Threshold Question:

Do the federal rules  
apply to YOU?

- There are different national and state rules
- Most federal rules come through the Fair Labor Standards Act (FLSA), so if your organization is not subject to FLSA, some rules may not apply to you
- FLSA can apply to the organization as a whole or to individual employees



# FLSA Enterprise Coverage

- Non-profits are not subject the FLSA unless:
  1. They are a “**named enterprise;**” OR
  2. Their **gross revenue derived from a business purpose** exceeds \$500,000 per year
- If either is true, all employees engaged in the enterprise are covered by the FLSA
- Named Enterprises
  - ☐ Hospitals
  - ☐ Providers of residential medical or nursing services
  - ☐ Schools (including preschools and higher education)
  - ☐ State, local, or federal government agencies
- Gross revenue
  - ☐ Only includes funds received from activities performed for a business purpose (services for a fee); it does NOT include contributions, grants, etc.
  - ☐ Only those employees who work in the business enterprise are covered, not employees who only perform charitable activities



# For Example:



- A non-profit animal shelter provides free veterinary care, adoption services, and shelter for homeless animals (charitable activities).
- In addition, it provides veterinary care for a fee to customers (commercial activities).
- If the revenue generated from the commercial activities is at least \$500,000 in a year, all employees engaged in commercial activities are protected by the FLSA
- BUT: employees of the organization's charitable activities are not covered on an enterprise basis since those activities do not have a business purpose.



# FLSA Individual Coverage

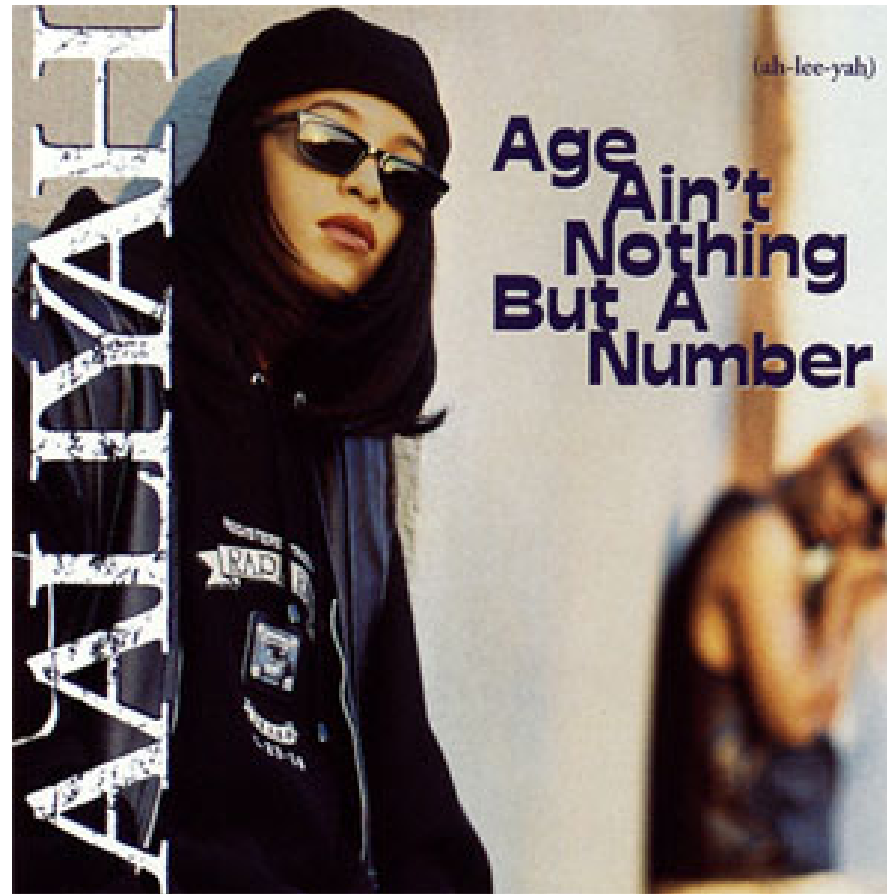
- Even if an entire organization is not subject to FLSA, *individual* employees may be protected if they regularly engage in interstate commerce or in the production of goods for interstate commerce
  - ✓ *E.g., interstate telephone calls, shipping materials to another state, or transporting persons/property to another state.*

## The Bottom Line:

Always abide by Georgia law.

Unless you KNOW you are not subject to the FLSA, assume federal law applies, too.

When in doubt, apply the most restrictive law



## Part One

# Age and Hour limitations

# How Old Do you Have to be to Work?

**Federal:** 14-years-old

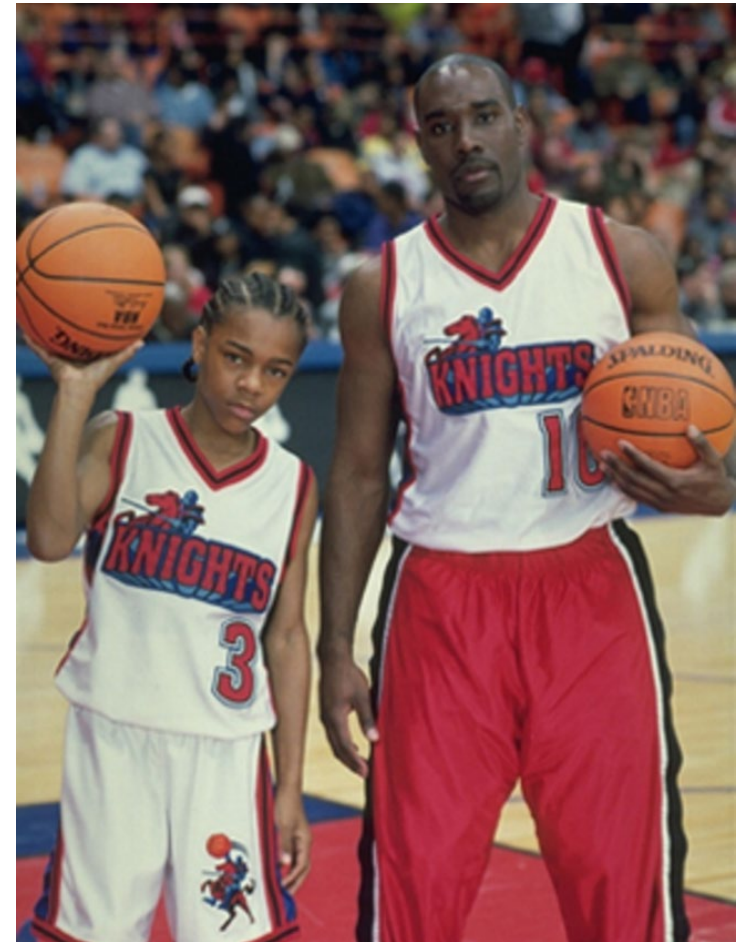
**Georgia:** 12-years-old

There are limited exceptions for younger children to engage in certain types of work, such as babysitting, acting, non-hazardous work for their parent's business, and – oddly – gathering evergreens and making evergreen wreaths



# Schedule Limitations, Age 15 and Under

- No more than:
  - ✓ 3 hrs (US) or 4 hrs (GA) on a school day, including Fridays;
  - ✓ 8 hrs on a non-school day (US/GA)
  - ✓ 18 hrs during a week when school is in session (US)
  - ✓ 40 hrs during a week when school is not in session (US/GA).
- Only between:
  - ✓ 7 a.m. - 7 p.m., extended to 9 p.m. June 1st – Labor Day (US)
  - ✓ 6 a.m. – 9 p.m. (GA)
  - ✓ Not during normal school hours (US/GA)
- “School day” or “school week” is any day or week when the public school for the worker’s residence is in session (even if attend home school or private school)
- Different rules apply to agricultural workers and entertainers



# Schedule Limitations, Age 16 and Up

***NONE!***

- No mandatory cutoff hour
- No maximum number of hours per day or week
- Only limit to work is employee willingness



# Hypothetical



You hire a 16-year-old and a 17-year-old to work the morning shift at your organization's annual "back-to-school" festival. The event occurs on the first Saturday after school begins. The day before the festival, all of your other employees are forced to quarantine due to an illness. Can you require the two teen employees to work both the morning (7 a.m. to 3 p.m.) and evening (3 p.m. to 1 a.m.) shifts ?



# Yes, you can. State and federal law do not limit hours for ages 16+

BONUS Fact # 1: If the employees hold a provisional driver's license (Class D), they are not permitted to drive between 12 a.m. and 6 a.m., even if they are driving home from work.

BONUS Fact #2: Federal and state law do not require you to provide a meal or rest break to the employees during the long double shift.



# Georgia Employment Certificates

- All minors under age 16 must present the certificate to the prospective employer before they are hired.
- Also applies to minors from out-of-state working in Georgia
- Minors may obtain certificates through their school or, if home schooled, the person providing the home study program
- Employer Responsibilities
  - Pre-Employment: Provide the minor with a statement describing the type of employment offered; and indicating that, if furnished with the certificate, the prospective employer could employ the minor immediately
  - Post-Termination: Return the employment certificate to the issuing officer within five days of the end of the minor's employment



## Part Two

# Activity Limitations

# What Type of Work Can Minors Perform?

- State and federal law prohibits minors from engaging in “hazardous” occupations or tasks
- These requirements are the same under both state and federal law as Georgia has adopted the federal regulations
- Age 15 and younger: All work “hazardous” unless specifically listed as approved
- Ages 16 & 17: All work okay unless specifically identified as one of 17 “hazardous” categories



# Approved Work, Age 15 and Under

- Errands or delivery by foot, bicycle and public transportation
- Intellectual or creative tasks
  - Computer programming, teaching, tutoring, singing, acting, or playing an instrument
- Lifeguards (*15-year-olds only*)
- Limited kitchen and food service
  - Reheating and serving food, washing dishes, cleaning equipment
  - Food prep/cooking but only with (1) an electric or gas grill not using an open flame, or (2) a deep fryer utilizing automatic device to raise/lower the baskets
- Loading or unloading objects for use at a work site
- Office and clerical tasks
- Pumping gas and hand cleaning cars
- Retail
  - Cashiering, bagging, selling, price marking, packing and shelving
  - Cleaning vegetables and fruits, wrapping sealing, and labeling, weighing, pricing, and stocking of items when performed in areas separate from a freezer or meat cooler
- Yard work without power-driven tools



# Banned Work, Age 15 and Under

**Anything not specifically permitted.**

So NO:

- Baking
- Construction
- Manufacturing jobs
- Operating power-driven equipment (including lawn mowers, edgers)
- Sign waving
- And more



# Restricted Work, 17 or Younger: *Driving*

- 16-year-olds or younger cannot drive for any reason
- 17-year-olds can drive, with limitations:
  - Car/small trucks only- no golf carts, ATVs, motorcycles
  - Completed state approved driver education course
  - Daylight hours only
  - Instructed by employer that seatbelts required
  - Less than one-third of workday
  - Less than 20% of work hours in one week
  - No more than 3 passengers
  - No record of moving violations at the time of hire
  - No sales routes
  - No time-sensitive deliveries (pizzas, bank deposits, etc.)
  - No towing
  - Only if occasional and incidental to employment



# Restricted Work, 17 or Younger: Power-Driven Apparatus/Equipment

Cannot assist with operation of or ride on power-driven hoisting apparatus:

- Backhoes
- Bobcats
- Boom trucks
- Cherry pickers
- Cranes
- Forklifts
- Non-automatic elevators
- Scissor lifts

*Does not apply to ski resort chair lifts or gas station/mechanic car lifts*

May only assist with operation of patient lifts as the junior member of a two-person team after satisfying training requirements



Cannot operate certain power-driven equipment:

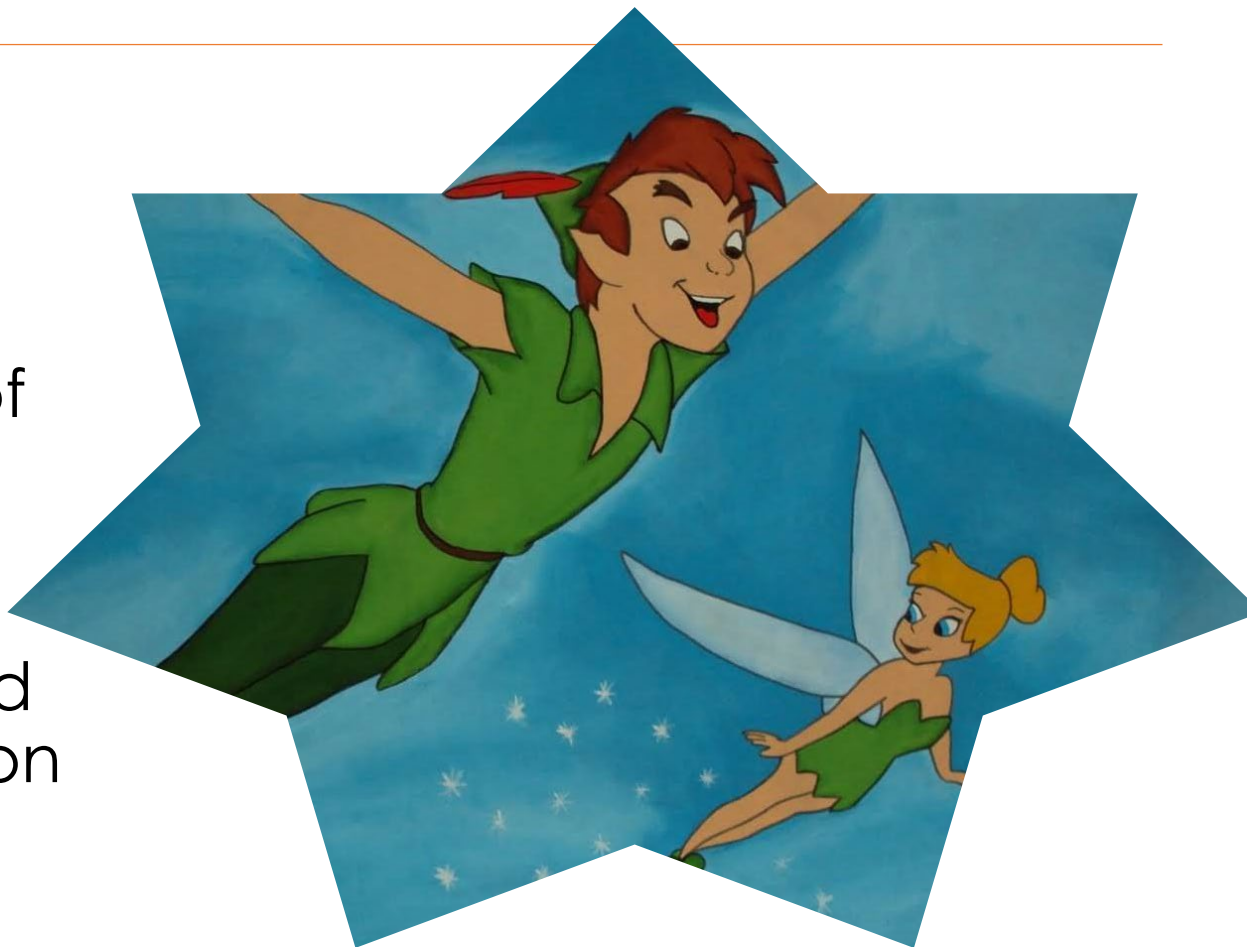
- Bakery equipment (i.e., mixers) if larger than portable household model
- Circular saws, band saws, chain saws
- Deli meat slicers
- Woodworking machines (sanders, etc.)



# Restricted Work, 17 or Younger: *Roofing*

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- No roofing
- No work in close proximity to a roof (including gutters and downspouts)
- No roofing related tasks performed on the ground



# Hypothetical

You hire a 15-year-old, a 16-year-old, and a 17-year-old as summer maintenance workers for your property. Can they:



	15 y/o	16 y/o	17 y/o
Drive visitors around in a golf cart	No	No	No
Drive to Home Depot in a car to buy supplies	No	No	Yes
Mow the lawn	No	Yes	Yes
Patch leaks in the roof	No	No	No

# Hypothetical

**A 14-year-old works as a dishwasher in the kitchen at your on-site café. Sometimes the chef asks him to take pies out of the oven. Is this in accordance with the child labor laws?**

*No. Removing items from an oven is a “baking” activity prohibited for minors under age 16.*





## Part Three

# Minor Volunteers



# Intern or Volunteer?

- Both are unpaid
- The main difference is the motivation
- Volunteers “donate their services, usually on a part-time basis, for public service, religious, or humanitarian objectives.”



- Interns are driven by a desire to advance their careers or professional standing.
- Interns should be paid for their work when the employer is the primary beneficiary of the relationship
- The “primary beneficiary test” can help to determine if an employer should pay
- Volunteers do not displace employees or perform work that would otherwise be performed by regular employees.

# Primary Beneficiary Test

Interns may be unpaid and not considered employees if they meet any of the following (nonexhaustive) factors:

1. Employer and intern understand the intern is not entitled to compensation.
2. The internship is similar to training given in an educational environment.
3. The intern receives a receipt of academic credit upon completion of the internship or has integrated coursework they complete during the internship.
4. The internship accommodates the intern's academic commitments and corresponds with the intern's academic calendar.
5. The internship experience is for the benefit of the intern's learning and development.
6. The intern does not displace or supplant regular employees or perform duties typically performed by regular employees.
7. The intern is not entitled to a job after the internship.



# Other Volunteer Considerations

- Volunteers should not assist with the organization's commercial activities, such as a gift shop
- If a volunteer is also an employee, they may not volunteer for the organization to provide the same type of services for which they are paid
- If your organization requires volunteers to execute a waiver or consent form:
  - Contracts by unemancipated minors are *voidable*
  - Uncertain if parent signed waiver effective to limit liability to the minor
- Minor volunteers do not need to provide a Georgia work permit





# Questions?



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