

NATIONAL LEGISLATION ON HAZARDOUS CHILD LABOUR

Minimum Age Convention, 1973 (No. 138)
and
Worst Forms of Child Labour Convention, 1999 (No.182)

UNITES STATES

RATIFICATIONS

Convention No. 138	-
Convention No. 182	02 December 1999

1) *Country Overview*

2) *Code of Federal Regulations (C.F.R.).*

Original Language: English – [Full Official Text \(📄 on line\)](#) – ILO Summary.

Title 29 (Labour), Chapter V, Part 570, Subpart E-1, Section 570.71 listing **hazardous agricultural work for persons under the age of 16 years.**

3) *The Fair Labour Standards Act of 1938, as amended (29 U.S.C. 201, et seq.).*

Original Language: English - [Full Official Text \(📄 on line\)](#) – ILO Summary.

Section 13 5(A) and (B), establishing **work prohibited to persons who are 16 and 17 years of age.**

4) *Child Labour Requirements in Agricultural Occupations Under the Fair Labour Standards Act*

Original Language: English - [Full Official Text \(📄 on line\)](#)

5) *Child Labour Provisions for Non-agricultural Occupations Under the Fair Labour Standards Act*

Original Language: English - [Full Official Text \(🔗 on line\)](#)

6) *CEACR, 2013 Observation, Convention No. 182*

UNITED STATES

Country Overview

International Conventions and selected Laws on child labour and education	
C138, Minimum Age	NO
C182, Worst Forms of Child Labour	✓
CRC	NO
General Minimum age for admission to employment***	14
Minimum Age for Hazardous Work *	18
Compulsory Education Age**	Depends on the State
List of hazardous work ¹	Yes
Free Public Education	Yes

(*) There are two separated lists with different ages, one for non-agricultural work (prohibited to 16 and 17 years) and another for agricultural work. With regards to agricultural works the minimum age for hazardous agricultural work is 16 years (Title 29 of the Code of Federal Regulation).

(**) In the U.S., schooling is compulsory for all children. The age range for which school attendance is required varies from state to state. Some states allow students to leave school between the ages of 14–17 before finishing high school only with parental permission. In some other states, students are required to stay in school until age 18.

(***)The FLSA confines the employment of 14- and 15-year-olds to those jobs and time periods that the Secretary of Labour has determined will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

¹ The list of hazardous work in agriculture includes: operating a tractor over 20PTO, operating some machines (corn, cotton picker, forage harvester, etc.), driving a bus, truck, inside a fruit, forage or grain storage, handling or applying agricultural chemicals.

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Code of Federal Regulations (C.F.R.)

Original language

English

Abstract

Title 29 (Labour), Chapter V, Part 570, Subpart E-1: Section 570.71 listing **hazardous agricultural work for persons under the age of 16 years.**

Text of legal provisions

➤ **Section 570.71: Occupations involved in agriculture.**

“(a) Findings and declarations of fact as to specific occupations. The following occupations in agriculture are particularly hazardous for the employment of children below the age of 16:

(1) Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

(2) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner;

(ii) Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or

(iii) Power post-hole digger, power post driver, or non-walking type rotary tiller.

(3) Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines:

(i) Trencher or earthmoving equipment;

- (ii) Fork lift;
 - (iii) Potato combine; or
 - (iv) Power-driven circular, band, or chain saw.
- (4) Working on a farm in a yard, pen, or stall occupied by a:
- (i) Bull, boar, or stud horse maintained for breeding purposes; or
 - (ii) Sow with suckling pigs, or cow with newborn calf (with umbilical cord present)
- (5) Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than 6 inches.
- (6) Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.
- (7) Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.
- (8) Working inside:
- (i) A fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere;
 - (ii) An upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;
 - (iii) A manure pit; or
 - (iv) A horizontal silo while operating a tractor for packing purposes.
- (9) Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) as Category I of toxicity, identified by the word poison and the skull and crossbones on the label; or Category II of toxicity, identified by the word warning on the label;
- (10) Handling or using a blasting agent, including but not limited to, dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or
- (11) Transporting, transferring, or applying anhydrous ammonia. ...”

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The Fair Labour Standards Act of 1938, as amended (29 U.S.C. 201, et seq.)

Original language

English

Abstract

Section 13(5(A) and (B)), establishing **work prohibited to persons who are 16 and 17 years of age.**

Text of legal provisions

➤ **Article 13(5(A) and (B)).**

“A) In the administration and enforcement of the child labor provisions of this Act, employees who are 16 and 17 years of age shall be permitted to load materials into, but not operate or unload materials from, scrap paper balers and paper box compactors:

- (i) that are safe for 16- and 17-year-old employees loading the scrap paper balers or paper box compactors; and
- (ii) that cannot be operated while being loaded.

(B) For purposes of subparagraph (A), scrap paper balers and paper box compactors shall be considered safe for 16-or 17-year-old employees to load only if:

- (i) the scrap paper balers and paper box compactors meet the American National Standard Institute’s Standard ANSI Z245.5–1990 for scrap paper balers and Standard ANSI Z245.2–1992 for paper box compactors; or
- (ii) the scrap paper balers and paper box compactors meet an applicable standard that is adopted by the American National Standards Institute after the date of enactment of this paragraph and that is certified by the Secretary to be at least as protective of the safety of minors as the standard described in subclause (I);
- (iii) the scrap paper balers and paper box compactors include an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older; ...”

UNITED STATES

COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS (CEACR) - Worst Forms of Child Labour Convention, 1999 (No.182)

➤ 2013 Observation, Convention No. 182

- **Article 3 (d) and 4 (1) - Hazardous work and determination of types of hazardous work. Hazardous work in agriculture from 16 years of age.**

The Committee previously noted that section 213 of the Fair Labour Standards Act (FLSA) authorizes children aged 16 years and above to undertake, in the agricultural sector, occupations declared to be hazardous or detrimental to their health or well-being by the Secretary of Labour. The Government, referring to Paragraph 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), which allows ratifying countries to permit 16–17 year-olds to engage in types of work referred to by *Article 3(d)* on the condition that the health, safety and morals of the children are fully protected, stated that Congress considered it as safe and appropriate for children from the age of 16 years to perform work in the agricultural sector.

However, the Committee noted the allegation of the American Federation of Labour and Congress of Industrial Organizations (AFL–CIO) that a significant number of children under 18 years were employed in agriculture under dangerous conditions, including long hours and exposure to pesticides, with risk of serious injury. It also noted the statement in the report of the International Trade Union Confederation (ITUC), for the World Trade Organization General Council on the Trade Policies of the United States of 29 September and 1 October 2010, entitled “Internationally recognized core labour standards in the United States of America” that health and safety standards for child farm workers were severely lacking, and that from 2005 to 2008, at least 43 children died in work-related accidents in farms. The Committee noted the statement in the document available on the website of the Department of Labour (DOL) entitled “Notice of proposed rulemaking to amend the child labour in agricultural regulations – Frequently asked questions” that “children employed in agriculture are some of

the most vulnerable workers in America. The fatality rate for young agricultural workers is four times greater than that of their peers employed in non-agricultural workplaces. Furthermore, the injuries suffered by young farm workers tend to be more severe than those suffered by non-agricultural workers. The current federal agricultural child labour rules were issued over 40 years ago and have never been updated or even revised.”

Nonetheless, the Committee took due note that, based on the recommendations of the National Institute for Occupational Safety and Health (NIOSH), the Wage and Hour Division (WHD) of the DOL published a Final Rule on child labour provisions on 20 May 2010, which revised existing Hazardous Orders (HOs) to prohibit children under 18 years from performing certain types of work, including: (i) working in poultry slaughtering and processing plants; (ii) forestry services and timber tract management; (iii) operating balers and compacters designed for non-paper products; and (iv) operating wood chippers. The Committee also noted that the DOL issued a Notice of Proposed Rulemaking in September 2011, containing proposals to revise the child labour agricultural HOs, as well as some non-agricultural HOs. The Government indicated that the proposal, if finalized, would adopt the remaining specific NIOSH recommendations on existing agricultural HOs, to increase the parity between agricultural and non-agricultural child labour prohibitions. This proposal created an HO to prohibit the employment of persons under the age of 18 years in occupations in farm product and raw materials, wholesale trade industries such as work in country grain elevators, grain bins, silos, feed lots, feed yards, stockyards, livestock exchanges and livestock auctions. Additionally, this proposal included several revisions to existing agricultural HOs, such as prohibiting hired farm workers under 16 years of age from: the planting, cultivating, topping, harvesting, baling, barning, and curing of tobacco; any work that falls within the Environmental Protection Agency classification of pesticide handler; occupations involving working inside a manure pit; work in the agricultural sector such as construction, wrecking and demolition and excavation; certain tasks involving working with or around animals; and operating all power-driven machines. However, the Committee noted with serious concern that this proposed rule was subsequently withdrawn in April 2012.

In this regard, the Committee notes the Government’s information that, notwithstanding the fact that the proposed rule to revise the child labour agricultural HOs was withdrawn in April 2012, the WHD continues to focus on improving the safety of children working in agriculture and protecting the greatest number of agricultural workers. One of the WHD’s strategies is to use education and outreach to promote understanding of agricultural employers’ and workers’ rights and responsibilities alike, which it does through several initiatives in specific sectors and in various States. In addition, the Occupational Safety and Health Administration (OSHA) has increased its focus on agriculture by creating

the Office of Maritime and Agriculture (OMA) in 2012, which is responsible for the planning, development and publication of safety and health regulations covering workers in the agricultural industry, as well as guidance documents on specific topics, such as ladder safety in orchards and tractor safety. In 2013, OSHA reconvened the Agriculture Task Force to further increase its focus on assisting the agricultural industry. The OSHA has also undertaken a number of enforcement initiatives that address working conditions in the agricultural sector, including for agricultural workers under 18 years of age. The Government reiterates its dedication towards seeking improvements in child labour safety and health, in particular in agriculture, and states its willingness to continue the dialogue on this subject with the Committee.

The Committee welcomes the measures taken by the Government to protect agricultural workers, including those under 18 years. However, it reminds the Government that work in agriculture was found to be “particularly hazardous for the employment of children” by the Secretary of Labour. In this regard, according to the OSHA website, agriculture ranks among the most dangerous industries, and between 2003 and 2011, 5,816 agricultural workers died from work-related injuries in the United States. In 2011 alone, 570 agricultural workers died from work-related injuries, including 108 youths. Of the leading causes of fatal injuries to youths on farms in the United States, 23 per cent involved machinery (including tractors), 19 per cent involved motor vehicles (including all-terrain vehicles), and 16 per cent were due to drowning. In addition, the website indicates that an estimated 33,000 children have farm-related injuries each year in the United States, which are the result of being directly involved in farm work.

Therefore, the Committee must observe that, despite the several awareness-raising and educational measures taken by the Government to inform agricultural workers, including children, about their rights and safety at work, the agricultural sector remains an industry that is particularly hazardous and detrimental to young persons.

The Committee, therefore, urges the Government to take the necessary measures to ensure that young persons between 16 and 18 years of age working in agriculture are only permitted to perform work in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190, namely that their health and safety is protected and that they receive adequate specific instruction or vocational training. It requests the Government to provide information on the concrete measures taken in this regard and on the results achieved in its next report.

The Committee also strongly encourages the Government to reconsider the withdrawal of the proposals contained in the Notice of Proposed Rulemaking of 2 September 2011, which would have increased the parity between agricultural

and non-agricultural child labour prohibitions by prohibiting some tasks associated with agricultural work to children under 18 years and strengthening the protection provided to children under 16 years working in agriculture.