



UNITED STATES DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington, DC 20210



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FIELD ASSISTANCE BULLETIN No. 2020-3

MEMORANDUM FOR: Regional Administrators
Deputy Regional Administrators
Directors of Enforcement
District Directors

FROM: Cheryl M. Stanton
Administrator

SUBJECT: When schools that are physically closed are considered in session for purposes of Child Labor.

This Field Assistance Bulletin (FAB) provides guidance regarding when schools that have physically closed in response to the COVID-19 pandemic are nonetheless considered to be in session for the purposes of the child labor laws applicable to the employment of children under the age of 16 in agricultural and nonagricultural employment. In general, school is in session if the local public school district requires its students to participate in virtual or distance learning, even if schools in the district are physically closed. Conversely, a physically closed school generally will not be considered to be in session if the district does not require virtual or distance learning.

Background

The Fair Labor Standards Act's child labor provisions and the Department's child labor regulations are intended to ensure that young people's employment does not jeopardize their health, safety, well-being, or educational opportunities.

The Department's Child Labor Regulation 3 sets forth employment standards for 14- and 15 year-olds in nonagricultural occupations, including limitations on hours of employment. 29 C.F.R. § 570.35. The precise limitations depend on whether school is "in session." School is considered to be "in session" during any week in which the public school district in which the minor resides requires students to attend school for at least one day or partial day and during any day in which such attendance is required. *Id.* § 570.35(b). With limited exceptions,¹ during any

¹ For example, school is not considered to be in session for a minor age 14 or 15 who has graduated high school, has been excused from compulsory school attendance, has a child to

week in which school is in session minors age 14 and 15 are permitted to work in nonagricultural employment only outside of school hours and may not work more than 3 hours in any school day, including Fridays, not more than 8 hours in any non-school day, and may not work more than 18 hours total in the week. 29 C.F.R. § 570.35(a)(1), (3), (5). During any week in which school is not in session, minors age 14 and 15 may not work in nonagricultural employment more than 8 hours in any day and not more than 40 hours total in the week. *Id.* § 570.35(a)(2), (4).²

In agricultural employment, a child age 14 and older is permitted to work “outside of school hours” of the public school district where such child is living while so employed, which generally contemplates the same question of when school is in session. 29 U.S.C. § 213(c)(1)(C); *see* 29 C.F.R. § 570.123(b) (defining “outside school hours” to include “periods and before or after school hours, holidays, summer vacation, Sundays, or any other days on which the school for the district in which the minor lives does not assemble”).

Many public school districts have physically closed schools in response to COVID-19 and, therefore, no longer require students to physically attend school. But many such districts continue to require students to receive at least some instruction via virtual or distance learning. It may be confusing to determine when school is in session for the purpose of agricultural and nonagricultural employment under such circumstances, and further clarification is needed.

When a physically closed school is “in session”

For purposes of nonagricultural employment, school is considered to be in session during any week in which the public school district in which the child resides requires its students to attend school, *either physically or through virtual or distance learning*. *See* 29 C.F.R. § 570.35(b); 29 C.F.R. § 570.123 (setting out similar criteria for agricultural employment). If a public school district physically closes schools in response to COVID-19 but requires all students to continue instruction through virtual or distance learning for at least one day or during any part of one day, school is in session in the school district during that day and that week. Minors age 14 and 15 may not work in nonagricultural employment during school hours as determined by the public school district in which they reside,³ and must limit hours of employment to 3 hours in any day

support and has received a waiver from school attendance requirements, is subject to a state or federal court order prohibiting school attendance, or has been permanently expelled (unless required to attend another school). 29 C.F.R. § 570.35(c); *see also* FOH 33e00 (parental exemption from hours requirements in nonagricultural employment).

² Regardless of whether school is in session, minors age 14 and 15 may work only “[b]etween 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.” *Id.* § 570.35(a)(6).

³ If a public school district that has physically closed schools has not issued new school hours for virtual or distance learning, the school hours that were in effect before schools physically closed continue to apply. *Cf.* 29 C.F.R. § 570.35 (“School hours refers to the hours that the local public school district where the minor resides while employed is in session during the *regularly scheduled* school year. (emphasis added)).

in which virtual or distance learning is required, 8 hours in any day in which no virtual or distance learning is scheduled, and 18 hours in the week.

Conversely, if a public school district physically closes schools and does not require all students to receive instruction through virtual or distance learning, school is not in session. In such cases, minors age 14 and 15 residing in that district may work in nonagricultural employment up to 8 hours in any day and 40 hours in any week.

For purposes of agricultural employment, whether school is in session is based on the school calendar for the public school district where the minor lives. *See* 29 § C.F.R. 570.123. If a school district is continuing to require instruction via virtual or distance learning, this is an indication that school is in session; if the school district is not requiring virtual or distance learning, in most instances school will not be in session. If school is in session, unless the parental exemption applies, *see* 29 C.F.R. § 570.123(c), minors residing in that school district may be employed in agricultural employment only outside of school hours as determined by the school district.⁴ If school is not in session, there are no school hours and thus no limitations on the hours that such minors may work in agricultural employment.

Generally, “[s]ummer school sessions, held in addition to the regularly scheduled school year, are considered to be *outside of school hours*.” 29 C.F.R. § 570.35(b) (emphasis in original). However, some school districts may be considering mandatory instruction for all students over the summer to make up for instruction time lost due to COVID-19. If a public school district does so, such mandatory summer sessions should be viewed as extensions of its regular schedule. Such periods of mandatory summer instruction would be considered “school hours,” and school would be considered to be in session during any day and during any week in which the school district requires all students to receive instruction. Thus, whether school is “in session” for a child who resides in a public school district that has physically closed schools will depend on the specific circumstances of that school district.

Please direct any questions regarding this FAB to the National Office, Office of Policy, Division of FLSA/Child Labor via regular channels.

⁴ As with nonagricultural employment, the school hours set at the outset of the academic year will continue to apply unless the school district has provided alternative school hours that are applicable to all students for virtual or distance learning.