

Hiring & Managing Minors, Non-English Speaking, & Other Diverse Individuals in the Workplace

Presented by Tom Dixon & Carrie Urrutia
Attorneys at Eastman & Smith



PLEASE

SILENCE

YOUR CELL PHONE



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BWC MONTHLY UPDATE

March 2023

BWC News

In February 2023, the BWC Board of Directors **reduced premium rates** for private employers an **average of 8%**.

Effective July 1, 2023 the reduction:

- **Saves employers \$90 million** over their 2022 premiums.
- **Follows 13 previous cuts** since 2008.

Year	Private Employer Rate Change**
2011	-3.9%
2012	-0.4%
2013	-2.6%
2014	-7.7%
2015	-9.8%
2016	-12.9%
2017	1.9%
2018	-13.0%
2019	-15.6%
2020	-11.6%
2021	-7.1%
2022	-10%
2023	-8.0%
-62.6%	

**These numbers reflect the combined impact of the loss cost changes and operating assessment changes.

Training Opportunities

IN-PERSON CLASSES



BWC is once again offering in-person occupational safety and health courses for Ohio employers with active workers' compensation coverage and their employees at no extra charge.

In-person Class	Date	Time	Location
OSHA 30: Industry Safety Principles	Mar. 13-17	8:30 a.m. - 4:30 p.m.	Cleveland
First Aid in the Workplace	Mar. 14	9:00 a.m. - 3:00 p.m.	Dayton
OSHA 10: Construction Safety Basics	Mar. 14-15	8:30 a.m. - 4:15 p.m.	Canton
Tree Work Essentials: Chainsaws, Chippers, and Other Safety Concerns	Mar. 16	8:30 a.m. - 4:15 p.m.	Cincinnati
OSHA 10: Construction Safety Basics	Mar. 21-22	8:30 a.m. - 4:15 p.m.	Cleveland
Job Safety Analysis Half-day	Mar. 23	9:00 a.m. - 12:30 p.m.	Portsmouth
First Aid in the Workplace	Mar. 23	9:00 a.m. - 3:00 p.m.	Toledo-BGSU
Fall Hazards in Construction and Maintenance	Mar. 28-29	8:30 a.m. - 4:15 p.m.	Columbus Metro
Electrical Hazard Recognition and Abatement	Mar. 28-31	8:30 a.m. - 4:30 p.m.	Canton
Emergency Preparedness Planning	Mar. 29	8:30 a.m. - 4:15 p.m.	Cincinnati

VIRTUAL TRAINING CLASSES (VTC)



As an alternative to in-person classes, BWC provides virtual, instructor-led classes to meet more in-depth learning needs. Virtual training classes provide the opportunity for participation and interaction consistent with the BWC classroom experience. All BWC program credits associated with a normal classroom experience are available with virtual class completion.

Virtual Training Class	Date	Time
Improving Hazard Recognition through Visual Literacy	Mar. 1-2	9:00 a.m. - 1:15 p.m.
Hazardous Waste Operations and Emergency Response Series Module 7: Physical Hazards	Mar. 13	9:30 a.m. - 2:00 p.m.
Violence in the Workplace	Mar. 15	9:30 a.m. - 1:00 p.m.
Electrical Safety in the Workplace through Insight and Implementation of NFPA 70E	Mar. 20-21	9:30 a.m. - 12:45 p.m.
Hazardous Waste Operations and Emergency Response Series Module 8: Confined Spaces	Mar. 27	9:30 a.m. - 2:00 p.m.
Safety Series Workshop Module 4: Walking Working Surfaces and Emergency Action Plan Basics	Mar. 29	9:30 a.m. - 1:00 p.m.
Hazard Communication Half-Day Workshop	Mar. 30	9:30 a.m. - 1:00 p.m.

Important program deadline for private employ

**MAR
31**

Friday, March 31, 2023
12:01 AM - 11:59 PM



Add to Calendar

- [DFSP](#) participants must submit an annual report.
- [OCP](#) participants must complete education requirements.
- [EM Cap](#) participants must complete education requirements.

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UPCOMING TOPICS/SPEAKERS

- April 18, 2023 – Diabetes 101
- May 23, 2023 – Effective Health & Safety Management Systems
- June 20, 2023 – Hearing Conservation

Dates are also located on the Black Swamp Safety Council Website



August – January Lunch Invoices Past Due – Need ASAP

Invoices for August – January lunches were due March 10th. They went to the attention of the accounts payable person provided or just to accounts payable position.

Please check in with your accounts payable person to make sure they received the invoice. If they did not receive the invoice yet, please email bssc@northweststate.edu to ask for an electronic version.

We cannot accept Credit Card or ACH payments for these invoices, but we can accept checks/cash payments.

RSVP & Pre-Pay Credit Card for Lunches on Website

<https://blackswampsafety.org/lunches/>

- Starting in April 2023, invoicing for lunches will no longer be an option.
- Invoices for February & March 2023 will be sent out soon.
- We now have the option to RSVP and pre-pay by credit card, if desired, on our website. We will attach the link in the RSVP email we send out.
- You can only pay for the current month's lunches.
- You cannot pre-pay for months or the whole year in advance.
- Zero refunds if you pre-pay for months in advance.
- No refunds for people who did not attend the meeting.

TODAY'S SPEAKER : Tom Dixon

Of Counsel Attorney; Eastman & Smith

In addition to representing private and public employers in all aspects of labor and employment law, Thomas A. Dixon has a well-established reputation for audience-friendly coaching and training at every level of an organization including executives, HR teams, first-line supervisors and others. Training curriculums are tailored to the specific needs of the organization or team and can include: EEO/Diversity, Harassment, Codes of Conduct, Positive Employee Relations/Union Avoidance, Internal Investigations, Management Skills and a variety of other compliance and/or litigation avoidance topics.

A close-up photograph of a person's torso and arm. They are wearing a dark denim long-sleeved shirt and a high-visibility safety vest with reflective yellow and red stripes. Their right hand is visible, adjusting a black strap on their belt. The background is a dark, textured wall.

Hiring and Managing Minors, Non-English-Speaking People, and Other Diverse Individuals in the Workplace

States are Looking to Ease Child-Labor Laws



A Major Crackdown on Child-labor Violations is in Process

Exclusive: Hyundai subsidiary has used child labor at Alabama factory

By Joshua Schneyer, Mica Rosenberg and Kristina Cooke



Company fined \$1.5 million for hiring children to clean meatpacking plants



Sareen Habeshian



	FY 2022	FY 2021	FY 2020	FY 2019	FY 2018	FY 2017
Cases With Child Labor Violations	835	747	851	858	853	748
Minors Employed In Violation	3,876	2,819	3,395	3,073	2,299	1,609
Minors Per Case	5	4	4	4	3	2
Cases With Hazardous Occupation Violations	216	208	266	240	300	240
Minors Employed In Violation of Hazardous Occupation	688	545	633	544	596	491
Child Labor Civil Money Penalties	\$4,386,205	\$3,394,646	\$3,579,571	\$3,183,584	\$2,690,650	\$1,963,499

Legal Requirements for Hiring Minors Overview

Fair Labor Standards Act Requirements

- 16- and 17-year-olds are restricted from certain hazardous occupations
- 14- and 15-year-olds are permitted to work a limited number of hours, but only outside of school, and only in non-hazardous jobs
- Children under 14 years old may only perform very limited types of work

Ohio Law

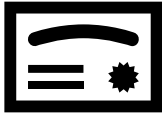
- Restrains the time 16 and 17 year olds can work
- Further restricts the time 14 and 15 year old can work
- All minors must receive meal and lunch breaks
- Work Permits/Certificates Required



Legal Requirements for All Minors



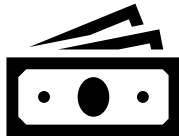
- For every 5 consecutive hours of work, a rest period of 30 minutes (paid or unpaid) must be provided.



- When school is in session, the minor must obtain a valid age and schooling certificate to work.
- When school is not in session, the minor must provide proof of their age and a signed statement being permitted to work from a parent/guardian.



- Before employment begins, both the minor and the employer must agree on the wages to be paid, and wages cannot be reduced without notice.



- Employers cannot withhold or deduct from wages for costs associated with the minor's negligence.



Legal Requirements for All Minors

Minors cannot work in “hazardous occupations”

UNLESS...

The work is done through a school vocational program for
certain hazardous occupations



Hazardous Occupations for Minors

Working around
explosives

Driving on public
roads

All Mining (including
coal mining)

Logging and
sawmilling

Power driven
woodworking
machines*

Exposure to
radioactive chemicals

Operation of power
driven hoisting
apparatus

Operation of power
driven metal forming,
punching, and
shearing machines*

Operation of power
driven meat
processing machines*

Operation of power
driven bakery
machines

Operation of power
driven paper products
machines*

Manufacturing of
brick, tile, and related
products

Operation of power
driven saws and other
cutting machines

Wrecking, demolition,
and ship breaking

Roofing*

Excavation

EASTMAN & SMITH

School Vocational Program

Students participating in a career-technical or STEM programs approved by the Ohio Department of Education or a state-approved pre-apprenticeship program are permitted to engage in the below activities:

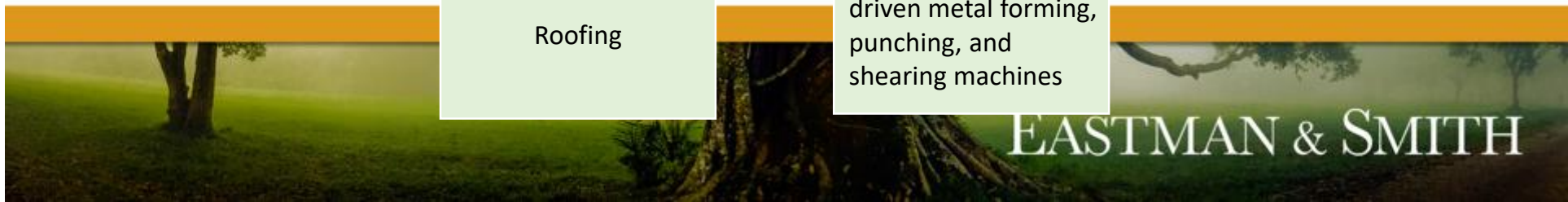
Power driven
woodworking
machines

Operation of meat
processing machines

Power driven paper
product machines

Roofing

Operation of power
driven metal forming,
punching, and
shearing machines



Legal Requirements for 16- and 17-year-olds

When School is in Session

- They cannot work before 7 a.m. and must stop work prior to 11 p.m.
- If they did not work past 8 p.m. the day before, then the minor can work before 6 a.m. on the next day.
- No restrictions on maximum working hours.
- Can work any profession other than those declared hazardous.

When School is Not in Session

- No restrictions on when they can work.
- No restrictions on maximum working hours.
- Can work any profession other than those declared hazardous.

Legal Requirements for 14 and 15 year olds

When School is in Session

- They cannot work before 7 a.m. and must stop work prior to 7 p.m.
- Cannot work more than 18 hours in any week.
- Cannot work for more than 3 hours on a school day.
- Cannot work for more than 8 hours on non-school days.
- Jobs are limited...

When School is Not in Session

- Cannot work before 7 a.m. and must stop work prior to 9pm from June 1 to September 1 or any school break longer than 5 calendar days
- Cannot work more than 8 hours a day
- Cannot work more than 40 hours in a workweek.
- Jobs are limited...

Allowed Jobs for 15 year olds

Office and clerical work

Cashiering and selling

Price marking, assembling orders,
packing

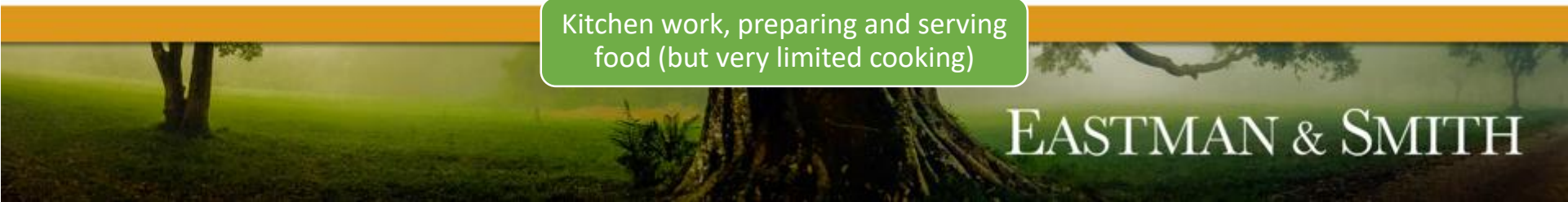
Bagging and carrying out customers'
orders

Errands and deliveries by foot, bike,
bus or train

Certain clean-up work and yard work

Pumping gas and hand cleaning cars

Kitchen work, preparing and serving
food (but very limited cooking)



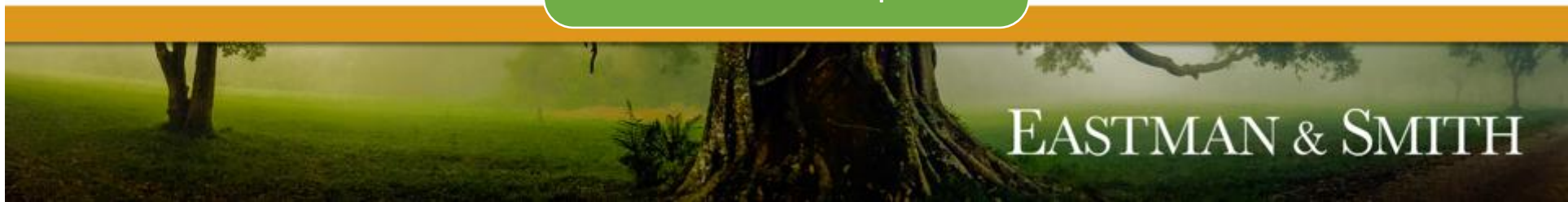
Allowed Jobs for 14 year olds

Deliver newspapers

Acting and Performing

Gathering Evergreens

Working for parent-owned company if it is not a hazardous occupation



Disallowed Jobs for 14 and 15 year olds

Manufacturing and Mining	Most processing occupations	Operating power-driven equipment	Transportation and Communications	Warehousing and storage
Construction	Work in or about boiler or engine rooms	Maintenance or repair of a building or equipment	Work in freezers and meat coolers	Outside window washing
Work involving power-driven food slicers and grinders, choppers or cutters and bakery mixers	Loading and unloading goods to and from trucks, railcars or conveyors	Work in areas where meats are prepared for sale	All occupations declared to be hazardous for 16- and 17-year-olds	Baking



President Biden, March 2023:

The abuse of child labor is “a scourge” and “we...[must] prevent it.”

Fines of \$15,138 per child are “not high enough to be a deterrent.”



HISPANIC WORKERS IN THE LABOR FORCE

in millions



Source: BLS.GOV

EASTMAN & SMITH

OCCUPATIONS WITH THE HIGHEST CONCENTRATIONS OF HISPANIC WORKERS



FARMING, FISHING
& FORESTRY

43.0%



BUILDING & GROUNDS
CLEANING & MAINTENANCE

37.9%



CONSTRUCTION
& EXTRACTION

35.7%



FOOD PREPARATION
& SERVING

27.3%



TRANSPORTATION &
MATERIAL MOVING

23.9%

Source: BLS.GOV

EASTMAN & SMITH

Hispanic Workers are disproportionately impacted by injuries and illnesses while on the job.

WHY?

- English is not their first language which leads to lack of understanding
- Fear of retaliation by speaking out or complaining



We cannot
find people to
work anymore

Majority of
the workforce
are young
Hispanic
workers.

What are the
best practices
to hire and
retain these
individuals?



National Origin as a Protected Class

- National Origin is a protected class under Title VII
- Includes discrimination based on an individual's (or his or her ancestors) physical, cultural, or linguistic characteristics including an accent, ***or the fact that English is their second language.***
- Includes discrimination “because of an individual's place of origin” which could be any country, or even the United States.
- Includes discrimination based on ethnicity.



National Origin as a Protected Class

- ***National Origin cannot be considered in:***
 - Hiring
 - Firing
 - Promotion
 - Work assignments
 - Classification of workers
 - ***Wages and Benefits***
 - Leave
 - Training and Apprenticeship Programs
 - Discipline
 - Layoffs



Example: Unlawful Failure to Promote

Joseph, who is Latino, has worked successfully for a transportation company for over five years. In annual evaluations, his supervisors noted his superior technical and organizational skills. Joseph applies for a promotion to a position in which he would supervise about 25 people performing work similar to his own. Joseph is qualified for the job, but the selecting official rejects him because he believes that some employees will not want to "take orders from a Latino." Based on these facts, the EEOC finds reasonable cause to determine that this decision was unlawful based on Joseph's national origin.



Hiring Best Practices for Non-English-Speaking Individuals

- Consider converting the job posting to Spanish and English.
- Consider hiring a translator to attend interviews.



Training Non-English-Speaking Employees

- OSHA Memorandum
 - Issued April 28, 2010
 - For training to be “adequate” and “effective”, the information must be presented in a way the employee will understand.



Safety Best Practices for Non-English-Speaking Employees

- Consider hiring a certified translator to conduct trainings.
- Convert displayed written work rules to pictures and display the pictures often near the applicable machinery or area.
- Provide policies in Spanish.
- Convert displayed written work rules to Spanish and hang up the Spanish sign next to the English sign.
- Provide written warnings in Spanish or have a bilingual member of management present with you to provide explanation of the warning in Spanish.
- Conduct performance reviews in Spanish or have a bilingual member of management conduct the performance review.



Questions?

