

R610. Labor Commission, Antidiscrimination and Labor, Labor.

R610-2. Employment of Minors.

R610-2-1. Authority.

This rule is enacted under authority of Section 34-23-104.

R610-2-2. Definitions.

A. "Commission" means the Labor Commission.

B. "Complainant" means any person making a claim, or a representative of a minor alleging a violation.

C. "Complaint" means a properly completed Complaint Form filed with the Division by a complainant or a representative of the complainant.

D. "Defendant" means any person or entity against whom a claim is made.

E. "Director" is the Director of the Division of Antidiscrimination and Labor. Director also means a designee denoted by the Commission to serve in the Director's absence.

F. "Division" means the Division of Antidiscrimination and Labor within the Commission and the personnel within the Division responsible for enforcement.

G. "Employer" includes every person, firm, partnership, association, limited liability company, corporation, receiver, or other officer of any of the above mentioned classes, employing any person in this state or who permits any person to perform work, labor, or services.

H. "Employer's immediate family" includes children, step children, brothers, and sisters living in the home of a sole proprietor or partnership, but may not apply to a corporation.

I. "Hazardous occupation" means any occupation defined as hazardous by the United States Department of Labor under 29 U.S.C. 201 et seq. of the Fair Labor Standards Act.

J. "Hearing Officer" means a presiding officer who is designated by the Commission to commence adjudicative proceedings, process claims and complaints, conduct investigations, hold hearings, assess penalties, issue subpoenas, and enter Orders.

K. "License" means a document issued by the Division to an employer employing minors in door-to-door sales.

L. "Nonprofit group" means a group recognized under Section 501(c) of the Internal Revenue Code as having nonprofit exempt status.

M. "Presiding Officer" includes those defined by Section 63G-4-103(1)(h)(I).

N. Additional definitions may be found in Section 34-23-103.

R610-2-3. Employment of Minors - General.

A. Every employer must allow the opportunity for a meal period of not less than 30 minutes and not later than five hours after the beginning of a minor employee's workday. If, during the meal period, the employee cannot be completely relieved of all duties and permitted to leave the work station or area, the meal period must be paid as time worked.

B. At least a 10 minute paid rest period for each four hours, or fraction thereof, shall be provided for each minor employee; however, no minor employee shall be required to work over three consecutive hours without a 10 minute rest period.

C. In those unusual situations where the specific provisions of subsections A. or B. cannot be met, the Division may decide whether the general intent of the rules has been met to ensure attainment of reasonable safeguards for a minor's health, safety, and education.

R610-2-4. Employment of Minors Engaged in Door-to-Door Sales, License.

A. The following shall apply for minors in the age range of 12 through 15 who work for income by engaging in sales of cookies, candies, magazines, merchandise coupons, and other similar products by door-to-door methods at locations including residential housing areas, shopping centers, and malls:

1. An employer-employee relationship is determined to exist if minors are paid by time, piece, carton, quantity, task, bonus, or any other basis of calculation;

a. employees shall be paid at least the Utah minimum wage in effect at the time the work is performed and shall include all time from the time of pickup to the time the minor is returned to the minor's home, except for that time utilized as a meal period as specified in R610-2-3.A.;

b. minors engaged in door-to-door sales of goods, products, or services are not independent contractors or outside sales personnel for purposes of payment of minimum wage;

2. Minors cannot be transported further than 30 miles from where they reside;

3. Minors so engaged must work in pairs, as a team, on the same or opposite side of the street while selling in residential housing areas;

4. Minors so engaged must be supervised by an adult supervisor for each crew of ten or fewer minors;

5. Minors must be within the sight or sound of the adult supervisor at least once every hour while selling in residential housing areas;

6. Minors must be returned to their respective homes daily after each day's work by 9:30 p.m.;

7. Minors must be allowed an opportunity to use rest room facilities at least once every three hours;

8. Minors must be allowed to partake of food and drink if they work more than three consecutive hours. This benefit cannot be utilized by the employer to coerce minors into making a set number of sales;

9. The driver of the vehicle that transports minor workers must be licensed by the state to transport minors;

10. Businesses must be licensed in accordance with the respective city or county ordinances in which they are employed;

11. Five days prior to conducting business in Utah, every employer employing minors who operates a door-to-door sales business must obtain a license from the Division. A written application for a license shall be filed with the Division and shall include:

a. the company or business name, address, and telephone number;

b. the name, address, and telephone number of the owner, each partner from applicant partnerships, each member of applicant limited liability companies, or the principals, officers, and directors of applicant corporations;

c. the business or occupation engaged in by the owner, partners, members, principals, officers, and directors for at least two years immediately preceding the filing of the application;

d. the name and address of any supplier of any item to be sold by minors for the door-to-door sales operation;

e. the identity of any out of state affiliation, and the name, address, and telephone number of local contact person;

f. certified results of a criminal history background check by the Utah Bureau of Criminal Identification for the owner, each partner from applicant partnerships, each member of applicant limited liability companies, the principals, officers, and directors of applicant corporations, and of all supervisors and van drivers who have contact with the minor employees; the criminal history background check must be current for the year the license is sought;

g. a recent photograph of the owner, each partner from applicant partnerships, each member of applicant limited liability companies, or the principals, officers, and directors of applicant corporations; and

h. two separate letters of recommendation attesting to the reliability and responsibility of each owner, partner, member, principal, officer, director, supervisor, and van driver. These letters must be written and signed by persons who are residents of the state of Utah and who have known the owner, partner, member, principal, officer, director, supervisor, or van driver at least one year.

12. For each supervisor or van driver hired subsequent to submission of application for license the business operator shall submit to the Division the certified results of a criminal history background check as delineated in Subsection R610-2-4.A.11.f. and letters of recommendation as delineated in Subsection R610-2-4.A.11.h. prior to contact with any minor employee by the supervisor or van driver.

13. Before a license shall be issued pursuant to this rule, the applicant shall deposit with the Commission a bond in the penal sum of \$10,000 with two or more sureties. The bond shall be made payable to the Labor Commission and shall be conditioned that the applicant, supervisor, and van driver will comply with the provisions of Title 34, Chapters 23, 28, and 40, and with the provisions of R610-1, R610-2, and R610-3, and shall pay all penalties or damages occasioned by any violation of these provisions in carrying on the business for which the license is issued.

14. The Division may deny or revoke a license when:

a. an applicant, supervisor, or van driver has been adjudged guilty of a violation of any criminal act, other than a minor traffic violation, in any state; or

b. an applicant has been determined by any state or federal agency to be in violation of any labor law within the past five years; or

c. any information provided as a part of the application process is false or misleading; or

d. any applicant fails to complete the licensing process and fails to provide the information requested; or

e. any business operator fails to submit to the Division the name and address of any van driver or supervisor hired along with

the results of a criminal history background check as delineated in Subsection R610-2-4.A.11.f. or letters of recommendation as delineated in Subsection R610-2-4.A.11.h. at the time of hiring the van driver or supervisor; or

f. any business operator fails to comply with the provisions of Utah labor law or Labor Rules 610-1, 610-2, or 610-3.

15. Each license issued pursuant to this rule shall expire on December 31 of the year issued.

16. Annually, a completed application for renewal of license form must be completed and submitted to the Division along with all requested documents prior to December 31.

17. A door-to-door sales business shall not publish, print, or otherwise represent that the Commission has approved of any product or service offered by the door-to-door sales business.

B. Any school sponsored group, scout group, or fund raising group selling for the benefit of its organization must provide group members with an identification card, signed by an official of the organization with the organization's official telephone number affixed for verification purposes. Subsections R610-2-4.A.3. through R610-2-4.A.10. shall apply to these groups and the minor participants.

C. Nothing contained in Subsections R610-2-4.A. and R610-2-4.B. shall apply to nonprofit groups where the individual selling for the group is a true volunteer and there is no intention, understanding, expectation, agreement, or representation that the individual selling for the nonprofit group will receive any individual compensation or reimbursement for the sale.

D. Nothing in Subsections R610-2-4.A. and R610-2-4.B. shall prohibit or abridge the right of a minor to deliver, sell, or solicit subscriptions for newspapers or other regularly printed material door-to-door when the minor is a news carrier of the newspaper or other regularly printed material and delivers them to an established readership for consideration.

R610-2-5. Written Authorization.

Minors seeking employment in occupations where authorization is required by the Commission as set forth in Sections 34-23-201 and 34-23-207(4), shall file a written request for authorization. Requests for authorization shall be made in writing and provide the name of the minor, his or her address, telephone number, date of birth, the name and address of the parent or guardian approving of the employment, and specify any related training completed or in progress.

The name of the prospective employer, the address and telephone number, the name and title of the employer's representative, the type of business, the specific duties of the minor, and the specific equipment or machinery the minor would be allowed to operate or repair shall also be provided in sufficient detail to allow a decision regarding the request for authorization. The Division shall review all requests for authorization and may issue authorization signed by the Division Director where appropriate, but shall in such cases determine and establish the hours and conditions of labor and employment for such authorization.

R610-2-6. Filing Procedure and Commencement of Agency Action.

For purposes of Section 63G-4-201, commencement of an adjudicative proceeding at the Division to resolve an alleged violation of Utah statutes or rules regarding employment of minors is accomplished by the filing of a complaint or by a notice of agency action filed by the Division at its discretion.

A. The alleged violation shall be filed in writing by the complainant or an authorized representative of the complainant on a form provided by the Division. The complaint form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Subsection 63G-4-201(2). The complaint shall include the complainant's name and address, the defendant's name and address, a brief and concise statement of the complaint or allegation, and the complainant's or his authorized representative's signature.

1. Upon receipt of a complaint, the Division shall enter its receipt and assign a complaint number.

2. The Division may telephone the Defendant and attempt to resolve the complaint.

3. When a rapid resolution is not effected, the Division shall mail a copy of the complaint and a blank answer form together with an accompanying agency cover letter.

4. The Defendant shall have ten working days from the date of the letter to submit an answer to such complaint.

5. The Defendant's answer shall be mailed to the Complainant who may submit an answer within ten working days.

6. Upon receiving a third complaint against an employer within a 12 month period, the Division shall invoke the penalty provision pursuant to Section 34-23-402, and notify the Defendant of the penalty at the time of notice under Subsection A.3.

B. The Division may at its discretion bring an agency action to determine any violation of any statute or rule pertaining to employment of minors, or any appropriate penalties, wages, or other enforcement relief. Commencement of an adjudicative proceeding is accomplished by a notice of agency action filed by the Division.

C. An adjudicative proceeding initiated pursuant to Subsection A. or B. is designated as an informal adjudicative proceeding and shall be conducted informally.

D. An informal adjudicative proceeding may be converted to a formal adjudicative proceeding pursuant to Subsection 63G-4-202(3).

R610-2-7. Default.

The presiding officer may enter an order of default against a party pursuant to Section 63G-4-209.

R610-2-8. Investigation.

For the purpose of determining the validity or invalidity of the filed complaint, the Division pursuant to Section 34-23-401, may:

A. Interview and obtain additional statements from either party;

B. Attempt to obtain from the Defendant an answer and statement where the Defendant has failed to submit an answer to the complaint;

C. Examine, copy, inspect, and summarize any relevant records or documents held by the parties or other persons;

D. Obtain written statements of third persons relevant to the

complaint;

E. Contact and receive relevant information from other government agencies or officials; or

F. Make any and all relevant inquiries necessary in making a preliminary decision.

R610-2-9. Preliminary Findings.

A. At the conclusion of the investigation or upon the Defendant's failure to respond to the allegations of the complaint, the Division may issue a Preliminary Finding.

B. Preliminary Findings shall set forth the issue or issues of the complaint and state the findings based on the information contained in the file. When:

1. The complaint has been determined to be valid the Preliminary Finding shall contain a brief statement of the reason thereof, the statute(s) or rule(s) violated, and specify the remedy which must be complied with within ten working days from the date of the document.

2. The complaint has been determined to be invalid the Preliminary Finding shall contain a brief statement of the reason thereof and contain notice that the complaint is being dismissed.

C. Preliminary Findings shall be mailed to the parties and any attorney of record.

D. Any party may submit a request for review or request an informal hearing; such request must be made in writing and received by the Division within ten working days of the date of the Preliminary Finding and shall state the reason for the request and include any available evidence to support their position.

E. Failure to request a review or request an informal hearing within the time prescribed in Subsection D precludes any such review or hearing.

R610-2-10. Order To Cease And Desist and Penalty.

A. A hearing officer may issue an Order To Cease And Desist the act of violation and may include an order of penalty based on the Preliminary Finding issued by the Division.

B. An Order To Cease And Desist the act of violation and an Order Of Penalty may be issued following an investigation and bypassing a Preliminary Finding where:

1. The act of violation is of such magnitude as to clearly exceed the standard of reasonable safeguards for a minor's health, safety, and education pursuant to Section 34-23-101.

2. The employer admits the violation has occurred or is occurring.

3. The employer failed to respond to the allegations of the complaint within the time specified or to participate in the investigation, or when the Division deems appropriate.

C. Attorney fees, in addition to the Order To Cease And Desist and a penalty, if any, shall be allowed in accordance with Section 34-28-13.

D. After issuance of the Order To Cease And Desist, the only agency review available is that specified in Section R610-2-12.

R610-2-11. Hearings.

A. Pursuant to Subsection 63G-4-202(1), the Division may

resolve the complaint for violation filed pursuant to Subsection R610-2-6.A., or an agency action commenced pursuant to Subsection R610-2-6.B. by holding an informal hearing subject to the provisions of Section 63G-4-203.

B. Where the Division deems appropriate, or upon a timely request of either party, an informal hearing may be scheduled.

C. Notice of hearing shall be mailed to the parties involved in the complaint advising them of the time, date, and place of the hearing. Notice of hearing shall be mailed to the last known address on the Commission's record and shall constitute proper notice.

D. Any request for continuance or change in the scheduled hearing date or time must be made to the Division at least seven working days prior to the scheduled date and shall state the reason for the request. The hearing officer may grant or deny the request.

E. The hearing officer may at his or her option record any hearing or accept testimony under oath.

F. The parties shall submit all relevant evidence, not previously submitted to the Division, at the hearing.

G. The hearing officer may request additional evidence of either party and set time limits for its submission, prior to the close of the hearing.

H. A signed Order issued by the hearing officer shall be pursuant to Section 63G-4-203, and shall be promptly mailed to each of the parties. Attorney fees in addition to the Order and penalty, if any, may be allowed in all Orders. The Order issued may be:

1. An Order To Cease And Desist any act of violation and may include a penalty pursuant to Section 34-23-401.

2. An Order specifying appropriate penalties, wages or other enforcement relief.

3. An Order For Dismissal terminating proceedings on the complaint or agency action by the Division.

I. After issuance of the hearing officer's Order, the only agency review available is that specified in Section R610-2-12.

R610-2-12. Agency Review.

A. After issuance of an Order To Cease And Desist or of a hearing officer's Order, the only agency review available to any party is a request for reconsideration as specified in Section 63G-4-302.

B. Reconsideration shall be based on the contents of the file. No new evidence will be accepted.

C. The Division Director is the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63G-4-302(3).

R610-2-13. Judicial Review.

Judicial review of an Order To Cease And Desist or of a hearing officer's Order are pursuant to Section 63G-4-402.

R610-2-14. Declaratory Orders.

As required by Section 63G-4-503, this rule provides the procedure for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and Orders governing or issued by the agency.

A. Petition form and filing.

1. The petition shall be addressed and delivered to the Director, who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. identify the statute, rule, or Order to be reviewed;

c. describe in detail the situation or circumstance in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during the regular work days;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

B. Reviewability.

1. The agency shall not review a petition for Declaratory Orders that is:

a. not within the jurisdiction and competence of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

C. Petition review and disposition.

1. The Director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take any action consistent with the law that the agency deems necessary to provide the petition adequate review and due consideration.

2. The Director may issue an Order pursuant to Subsection 63G-4-503(6).

D. Administrative review of the Declaratory Order is per Section 63G-4-302, only.

R610-2-15. Enforcement.

A. Abstracts and docketing of Orders.

1. An abstract of the final Order shall be docketed by the Commission in the office of the clerk of the district court of any county in the state. Time of receipt of the abstract must be noted thereon and entered in the judgment docket.

2. The docketing of such Order shall constitute a lien against the real property of the defendant situated in the county for a period of eight years.

B. Execution may be issued on the lien within the same time and in the same manner and with the same effect as if the Order were a judgment of the district court.

C. Appeals and judgment enforcement and fees.

1. A copy of each Order or final agency action not complied with after 30 days of its issuance and all notices of appeal of any Order or final agency action may be sent to the office of the appropriate County Attorney, or to counsel employed or appointed by the Commission, to represent the Commission on all appeals and to

enforce judgments.

2. Counsel employed or appointed by the Commission or the County Attorney for the county in which the defendant resides or conducts business shall represent the Commission on all appeals and shall enforce judgments.

3. Reasonable attorney's fees and costs on de novo appeals where the Commission prevails and for judgment enforcing procedures shall be awarded the Commission, the appointed counsel, or the county.

R610-2-16. Mailing.

The Division shall send all mailings to the parties and attorneys of record by regular first class mail to the last known address in the Division's records.

R610-2-17. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing shall be allowed.

KEY: wages, minors, labor, time

Date of Enactment or Last Substantive Amendment: March 24, 2008

Notice of Continuation: August 29, 2016

Authorizing, and Implemented or Interpreted Law: 34-23-101 et seq.; 34-28-1 et seq.; 34-40-101 et seq.; 63G-4-102 et seq.