



**CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR AGING AND INDEPENDENT LIVING**

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Vickie Yates Brown Glisson
Secretary

MEMORANDUM OF UNDERSTANDING

TO: Certified Assisted Living Communities

FROM: Judge Timothy Feeley, Deputy Secretary *T.F.*

DATE: October 12, 2017

RE: DAIL's Opinion on the Employment of Minors

It has recently been brought to the attention of the Department for Aging and Independent Living (DAIL) that minors (individuals under the age of 18 (eighteen) years of age), are being hired as regular employees in assisted living communities. DAIL was not aware of this practice and discussed the issue with KALFA representatives at a meeting held on July 11, 2017. KALFA and DAIL were not aware of the extent of this practice and it was decided that KALFA would send a survey questionnaire to all KALFA members and DAIL would send an identical survey to all non-KALFA assisted living communities. The goal of the survey was to determine the scope of this practice and to identify the areas within the assisted living where minors were being utilized. The results of the combined surveys has been compiled into a final report as follows:

Total KALFA members surveyed	96
Total KALFA members responded	40
Total Non-KALFA ALC's surveyed	23
Total Non-KALFA ALC's responded	14
Total # of ALC's that hire minors	10
Total # of minor employees in all ALC's	40
Total # of minors by area of employment	
CNA Caregiver	1
Caregiver	1
Food Service	35
Housekeeping	2
Activities	1
Age Range	15-17 years of age

The total number of minors hired as regular employees is not overwhelming but DAILE felt it important to develop guidelines for "Best Practice" if an assisted living makes the decision to employ minors. Best practice guidelines are:

Workers under the age of 18:

- a. Must maintain a personnel file that shall contain all the required employment documentation. The personnel file shall contain a criminal records check obtained from the Kentucky Justice Cabinet, Administrative Office of the Courts or through the KARES (Kentucky Applicant Registry and Employment Screening) system evidencing that applicants who are employed have not been convicted of a felony offense related to theft; abuse; or sale of illegal drugs; or a sexual crime; or a felony or misdemeanor offense related to abuse, neglect, or exploitation of an adult.***
- b. Minors shall only work in designated areas that are not in direct care with residents. If the minor has contact with the residents other than in a group setting, the minor must have direct supervision at all times. Examples of designated work areas that are not in direct care are: maintenance, receptionist, food service, recreational activities and housekeeping. All individuals that are working in food service must acquire a food service permit as required by the county or local health department.***
- c. Minors shall not have access to alcohol and shall not perform any task associated with alcohol. If minors are in areas where alcohol is served and/or present, the minor must be supervised by a trained employee who is 18 years or older.***
- d. Minor employees who have obtained a CNA (certified nursing assistant) certificate may assist with direct care as long if they have continuous supervision while providing the direct care. Direct supervision is defined as having another trained employee 18 years of age or older with a completed background and registry check.***
- e. Minors shall complete the same required initial and annual training as all other adult staff.***

The information below provides the Department of Labor's requirements on the employment of minors in an assisted living facility. Please note that the federal child labor provisions require that when 14 and 15 year olds work, they must be employed:

- Outside school hours
- Not more than 18 hours per week when school is in session
- Not more than 8 hours in any one day when school is not in session
- Not more than 3 hours in any one day, including Fridays, when school is in session
- Between 7 am and 7 pm except during the summer (June 1 through Labor Day) when the evening hours are extended to 9 pm.

(U.S. Department of Labor – Wage and Hour Division – Fact Sheet # 52 – The Employment of Youth in the Health Care Industry)

The FLSA statute appears at 29 U.S.C. & 201 et seq. The Federal regulations regarding hours worked appear in 29 C.F.R. Part 785.

When the state laws differ from the federal FLSA, an employee must comply with the higher standard. Link to your state labor department can be found at: <http://dol.gov/whd/contacts/state.htm>.

We hope this information has clarified DAIL's position regarding the employment of minors in an assisted living community. If you have any concerns that need to be discussed further, please contact Deputy Commissioner Lala Williams at lala.williams@ky.gov.