

The Rise of Child Labor in Virginia

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Virginia Interfaith Center for Public Policy

The Virginia Interfaith Center for Public Policy (VICPP) is the commonwealth’s oldest and largest faith-based network advocating economic, racial, and social justice in Virginia’s policies and practices.

VICPP has long been an advocate for low-income people and working families. Child labor is generally not a problem for wealthy communities. Rather, employers take advantage of young workers who need to support themselves and their families. As a society, we want our children to learn good work skills and have employment opportunities, but not at the expense of their education or health. Child labor laws seek to balance those values.

Special thanks to University of Richmond Bonner Scholar, Ina Loka who produced the maps on child labor found in this report and contributed significantly to the report’s overall success.

Introduction

“This is not a 19th century problem – this is a today problem.”

– Former U.S. Secretary of Labor Marty Walsh [ii]

In 2018, the United States Department of Labor began sounding the alarm about rising domestic child labor violations. Since then, some of the largest cases of child labor violations in modern US history have been investigated. Companies are employing minors in overnight shifts, asking them to use toxic chemicals to clean dangerous machinery, and hiring them to work in hazardous occupations that have resulted in lifetime injuries and death. [i]

The Virginia Interfaith Center for Public Policy submitted a FOIA request on April 25th, 2023, for all the child labor violations in Virginia from 2020 to YTD 2023. The resulting request was 539 pages long.

Reforms are needed to protect youth, educate and empower young workers to report violations and support state agencies who are in charge of enforcing child labor laws.

History of Child Labor Protections

The history of child labor in the US is a long and often fraught one. The Fair Labor Standards Act (FLSA), which was signed in 1938, continues to be the leading legislation governing child labor law at the federal level. But public outcry and

organizing against oppressive child labor began decades before the FLSA was signed, and significantly contributed to the political will needed to pass such legislation. [iii] State-level legislation and cross-movement organizing continue to play a crucial role in protecting and empowering youth in the workplace today.

Current Child Labor Law

Current child labor law in Virginia covers a myriad of offenses. Most of Virginia’s child labor laws match up with the standards laid out in the FLSA. The FLSA can be seen as the floor for all child labor standards across every state. Where a state child labor law is less restrictive than the federal law, the federal law applies. Where a state child labor law is more restrictive than the federal law, the state law applies. Virginia’s child labor laws outline working age requirements, working hour restrictions, hazardous work restrictions, and age verification and record-keeping requirements for agricultural and non-agricultural work. [iv] Many states, including Virginia, have historically taken important steps to strengthen non-agricultural child labor standards, but more reforms are necessary.

Why Child Labor Laws are Important

Working Hours Restrictions

The hours that young people are allowed to work reflect their unique developmental and educational needs. Studies have found that teens who work more than 20 hours tend to have lower grades, more school absences, and higher dropout rates. [v]

Employment Certificates and Age Verification Documents Kept on File

Employment certificates are the only notices provided to the state that indicate the child's name, age, occupation, work duties, and the employer's name, and ensure the parent's permission/approval for the child to work. Having evidence of the child's age on file is the only verification of the child's date of birth. This ensures time records indicate that the child is only working legally permissible hours and receiving mandated breaks. FOIA data shows

that 10,062 youth employment certificates were issued in Virginia in 2023, meaning law-abiding employers are aware of their responsibilities. This paperwork ensures the child is receiving all legal protections afforded them while allowing them to work and is crucial to protecting against oppressive child labor.

Hazardous Occupation Limits

Young workers have long been prevented from working in hazardous environments for good reason. Young workers have higher rates of job-related injuries [vi] and the highest rates [vii] of injuries that require emergency department attention. Additionally, the lifetime cost of an injury to a young worker is significantly higher than workers in higher age brackets. Subjecting young workers to hazardous conditions or occupations is a serious affront to their health, safety, and future opportunities.

Explosion of Violations

Nationally

Since 2018, the federal Department of Labor has seen a 69 percent increase in the number of minors employed in workplaces considered dangerous for young workers. [viii] Minors were found working in meatpacking plants, in construction, and at factories supplying major retail food brands. In FY 2023 5,800 children were found to be employed in violation of child labor laws – an 88 percent increase since 2019. [ix]

Furthermore, there have been concerted efforts in several states to weaken current child labor standards that would see children working more hazardous jobs, extending working hours, and lowering wages for minors who do the same jobs

as adults. [x]

Although all young people have a vulnerable position in their workplaces simply due to the unique circumstances of their ages, the nexus of immigration status, poverty, and lack of social supports means that certain young workers are disparately impacted by the uptick in oppressive child labor. It is estimated that approximately two-thirds of unaccompanied migrant children end up working full-time to pay off large debts owed for their journeys to the US. Combined with an already alarming increase in child labor violations, the surge of young unaccompanied migrant children seen since 2021 leaves these young people especially vulnerable to unscrupulous and exploitative employers. [xi]

Virginia

FOIA data on child labor violations in Virginia showed that child labor cases almost tripled from 2021–2022. High-profile cases occurring in Virginia that are being investigated at the federal level have detailed children cleaning equipment with acid and pressure hoses. [xii] The New York Times reported on a 14-year-old boy who was maimed while cleaning a conveyor belt at a slaughterhouse in Accomack County. [xiii] Overall, the FOIA data shows an alarming increase in a multiplicity of child labor violations that span industry and location.

Number of cases:

2020: 12 cases

2021: 57 cases

2022: 157 cases

2023 (YTD April 2023): 76 cases

Total cases: 302

Because most labor violations go unreported, the actual number of child labor violations are likely to be significantly higher than those reported.

Types of Industries

Food Service and the Fast-Food Industry:

Post-pandemic years have seen an increase in the employment of minors in the fast-food and food service industry. They often are made to work long and late hours while using hazardous kitchen equipment. From 2020 to the end of September 2023, minors aged 14–15 made up almost three-fourths of the federal violations in the food service industry. Repeated offenses by fast-food franchises have been attributed to the low penalties associated with child labor violations. [xiv]

Roofing and Construction

Recent years have seen a surge in child labor in the roofing industry, the second most dangerous job for minors next to agricultural work. Federal law prohibits roofing as an occupation for people under 18 years old due to how dangerous this occupation is, yet many children – especially young migrant children – are working in the roofing industry. Children working on construction sites are six times as likely to be killed as minors doing other work. [xv]

Factories and Poultry Plants

Some of the most prominent child labor cases investigated in recent years have involved large-scale investigations into the use of child labor in factories and poultry plants. These children have been discovered working during restricted hours, often on the night shift, and in with or near dangerous equipment and chemicals. [xvi]

Amusement and Adventure Parks

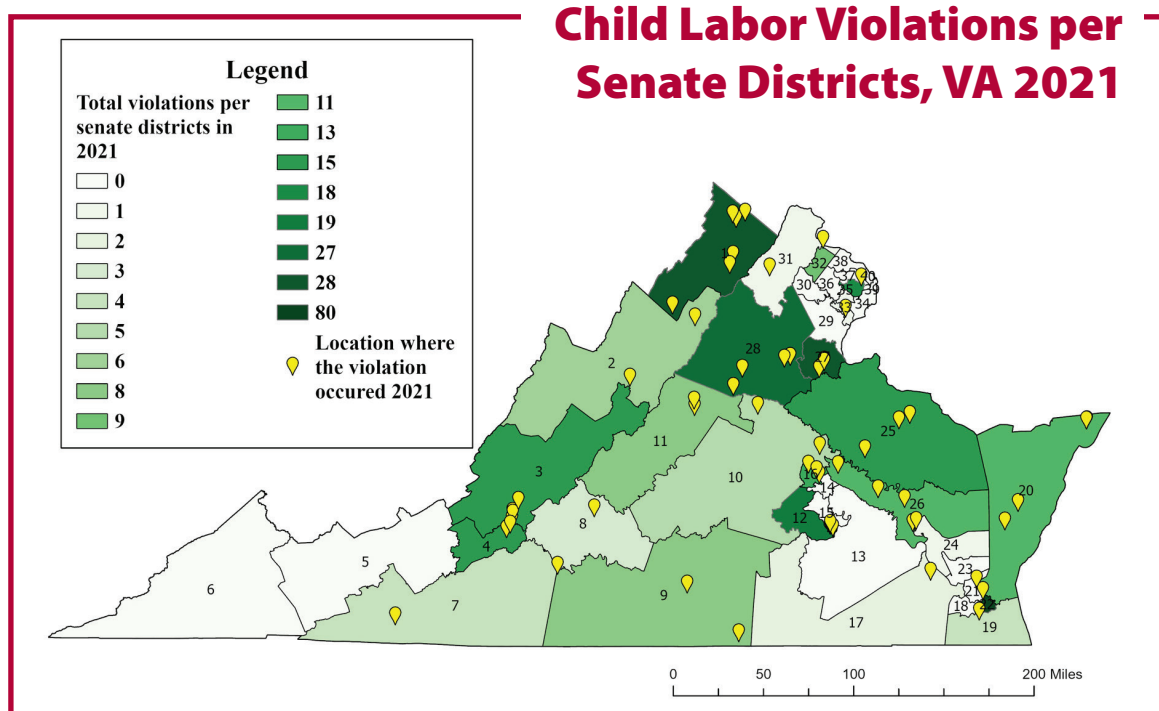
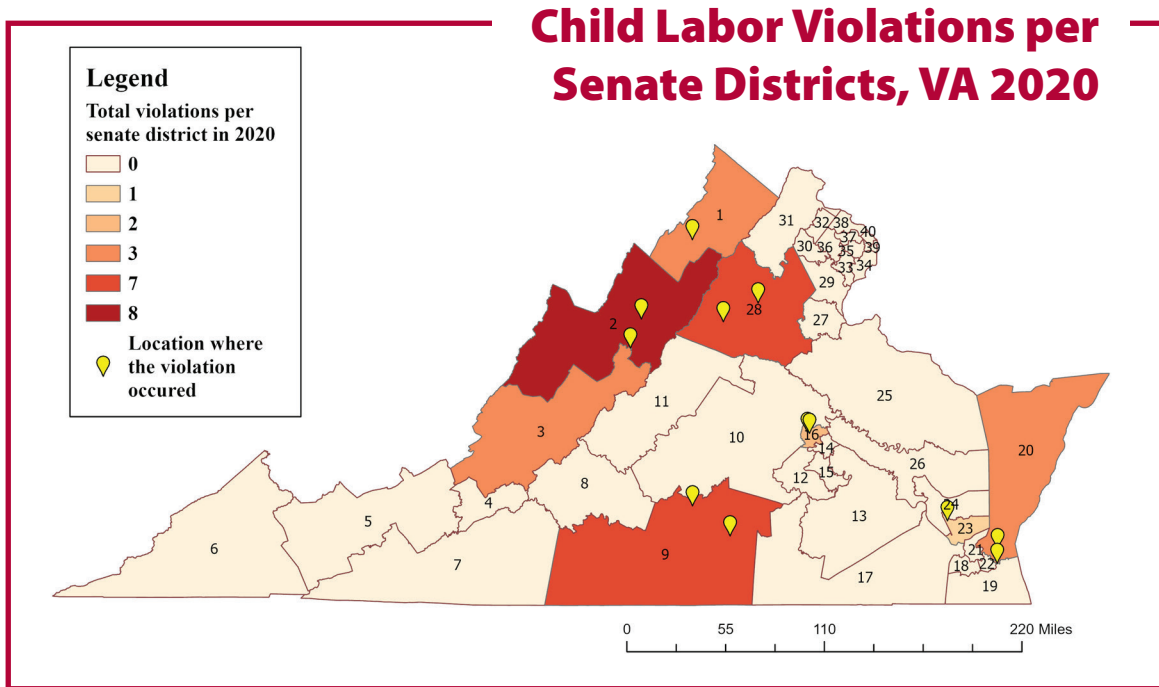
Amusement and adventure parks and centers in many states have been found working children in violation of labor laws. The largest case by number of violations and subsequent civil monetary penalties in the Virginia FOIA data was an amusement park that received a fine of 115,800 dollars for its over 70 pages worth of violations. [xvii]

Fissured Workplaces

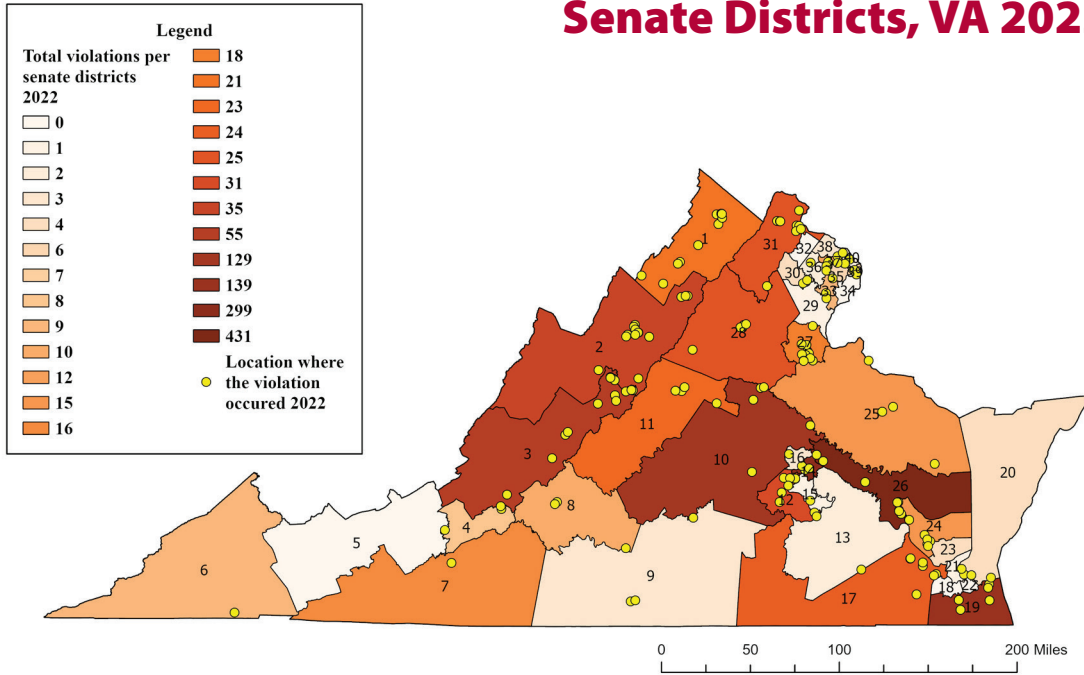
The fissured workplace refers to outsourcing the hiring and recruitment of jobs to subcontractors or subcontractors of subcontractors. In many high-profile child labor cases, this practice has been found to contribute to the hiring of children in violation of their rights. Dubious subcontractors may look for children to employ as they are cheaper labor, and less attentive to the dangers posed by many of these jobs. [xviii]

Locations

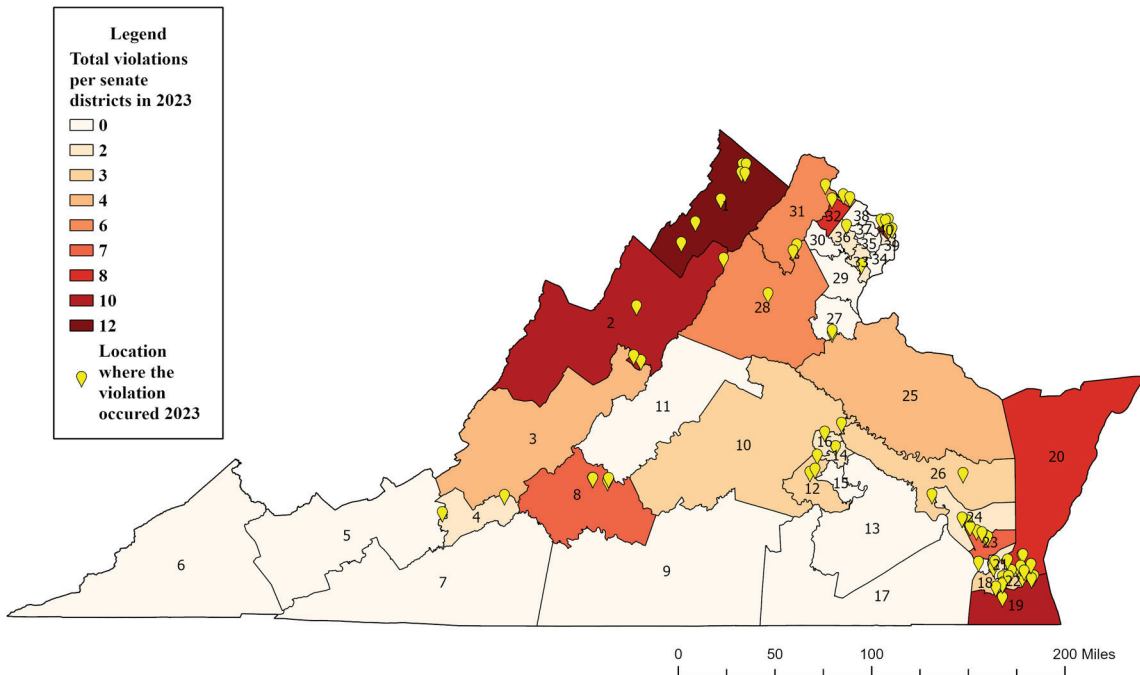
To get a fuller picture of where violations were occurring and/or being investigated, VICPP with guidance from the Spatial Analysis Lab at the University of Richmond, utilized ArcGIS Pro software to map the locations of the FOIA data by Virginia state Senate district. The resulting maps show that while not uniformly distributed, violations continue to occur in almost every corner of the Commonwealth.



Child Labor Violations per Senate Districts, VA 2022



Child Labor Violations per Senate Districts, VA January-May 2023



Causes and Contributing Factors

Worker shortages

One of the primary drivers of child labor violations is the need of low-wage employers to find workers. Without adequate numbers of adult workers, employers are hiring younger workers. The shortages are primarily, but not exclusively, in industries that pay low wages. If higher wages were offered, employers might have a broader pool of job applicants.

Limited deterrence

Noncompliance with workplace laws can be seen as a profit-maximizing decision in response to low enforcement rates, insufficient penalties, and inadequate workplace reporting. [xix]

Too few enforcement staff

At the federal level, the number of investigators in the Wage and Hour Division is only 733, which is a near-record low. In Virginia, FOIA data obtained on October 23, 2023, showed that Virginia has only 12 Labor Law division compliance officers for the entire state. Using census data on the number of workplaces across the US and in Virginia, there are approximately 15,007 workplaces for every one federal investigator, and 17,189 workplaces for every one labor law division compliance officer in Virginia. It is unlikely that enforcement staff can utilize tools like randomized workplace checks to obtain a fuller picture of child labor. With so few enforcement officers, enforcement data does not provide a comprehensive picture of child labor conditions and practices. [xx]

Insufficient penalties

Many states (and federally) have both criminal and civil penalties for child labor violations. Ex-

cluding a few provisions, the bulk of child labor penalties in Virginia are civil monetary penalties.

- *Federal Civil Monetary Penalties* – Employers may be subject to a civil money penalty of up to \$15,138 per violation for each employee who is the subject of a child labor violation that does not result in death or serious injury. However, the Labor Department has said that these penalties are not high enough to deter highly profitable companies from breaking the law. In addition, the FLSA permits an assessment of up to \$68,801 for each violation that causes the death or serious injury of a child, and willful or repeated violations up to \$137,602. [xxi]
- *Virginia’s Civil Monetary Penalties* – The current Virginia code sets a maximum of \$1000 per violation for each employee who is the subject of a child labor violation that does not result in death or serious injury. This number has not been updated in over 30 years. In addition, the Virginia code sets out a maximum civil monetary penalty of \$10,000 for each violation that causes the death or serious injury of a child. This number was last updated in 2007. [xxii]

Virginia law allows for a final civil monetary reduction amount that considers the business’s size and the violation’s gravity. This final reduction amount was applied in over 90 percent of cases listed in the FOIA, making final monetary penalties on average 24–28 percent less than first assessed according to the Virginia Field Operations Manual on Child Labor, and up to 50 percent less than assessed. [xxiii]

Proposed Solutions

Significant changes are needed to curb child labor violations, protect and empower young workers, and hold employers to account. VICPP supports several near-term and near-future policy recommendations.

Near-term Solutions

1. *Increase civil monetary penalties*
Increasing civil monetary penalties serves as an important deterrence mechanism and can also serve as an economic disincentive for repeated offending.
2. *Fund enforcement staff dedicated to child labor*
The number of federal and state investigators for all labor law violations is very low. Appropriately funding enforcement mechanisms will increase detection and serve as a deterrent for unscrupulous employers.

Near-future Solutions

1. *Implement liquidated damages for victims and their families*
The net impact of an injury for a child laborer is significantly more over a lifetime than for an adult. Many young people are left with mounting medical bills, and the inability to work after they sustain an injury on the job in violation of child labor laws. Allowing child laborers who are injured on the job in violation of child labor law to sue their employers for additional damages will help to make families whole.

2. *Empower Youth*
Equip schools to teach working-age students about child labor law and workplace safety laws.
3. *Targeted Investigations*
Equip the Labor Law Division's ability to do targeted investigations in industries with high incidences of child labor violations.

In the 2024 General Assembly session, VICPP is supporting a package of recommendations that would increase civil monetary penalties and provide additional enforcement capacity to the Virginia Department of Labor. HB 100, patroned by Del. Holly Seibold, would raise the civil monetary penalties for serious injuries or death to \$25,000, and raise the penalties for all other violations to \$2,500 with a minimum penalty of \$500. HB 100 also directs DOLI to form a stakeholder group of youth and youth-serving organizations to help inform young workers of their rights in the workplace, inclusive of young workers' language access needs. Budget item #349 7h, introduced by Del. Holly Seibold, would add crucial funding for additional DOLI enforcement officers dedicated to child labor.

Prioritizing the health, safety, and educational attainment of Virginia's young workforce must be a priority for all lawmakers, stakeholders, and state agencies. The Commonwealth should continue to support policy solutions that ensure accountability for child labor violations and uphold the dignity of all young people in the workplace and beyond.

Appendix A: Virginia Child Labor Laws, Agricultural and Non-Agricultural

WORKING AGE:

Non-Ag:

The minimum age at which a minor may work outside of school hours within the limitations of hazardous occupations and working hour restrictions is 14.

Ag:

The minimum age at which a minor may work in agriculture during school hours is 16. The minimum age at which a minor may work outside of school hours is 14, or 12 with parental consent. There are no specific age restrictions for children working for a parent or a person standing in place of the parent on farms, orchards, or in gardens owned or operated by such parent or person.

HOURS:

Working Hour Restrictions

Non-Ag: For Minors Under 16

Maximum hours/days when school is not in session: 8 hours daily/ 40 hours weekly/ 6 days weekly.

Maximum hours/days when school is in session: 3 hours daily/ 18 hours weekly.

Ag: For Minors Under 16

Virginia law does not specify any limitations on maximum working hours for minors under 16.

Nightwork restrictions:

Non-Ag: For Minors Under 16:

Work is prohibited during these hours: 7 p.m. (9 p.m. June 1 through Labor Day) to 7 a.m.

Ag:

Virginia law does not specify any time windows in which minors under 16 are prohibited to work.

(Virginia has no listed restrictions on nightwork nor working hour limits for minors aged 16 and 17 engaged in agricultural or non-agricultural work. However, minors must comply with compulsory school attendance laws and/or curfew ordinances that apply.)

HAZARDOUS OCCUPATIONS:

Non-Ag, Under 18:

A. No child under 18 years of age shall be employed, permitted, or suffered to work:

1. In any mine, quarry, tunnel, underground scaffolding work; in or about any plant or establishment manufacturing or storing explosives or articles containing explosive components; or in any occupation involving exposure to radioactive substances or to ionizing radiations, including X-ray equipment;
2. At operating or assisting to operate any grinding, abrasive, polishing, or buffing machine, any power-driven metal forming, punching, or shearing machine, any power-driven bakery machine, any power-driven paper products machine, any circular saw, band saw, or guillotine shear, or any power-driven woodworking machine;
3. In oiling or assisting in oiling, wiping, and cleaning any such machinery;
4. In any capacity in preparing any composition in which dangerous or poisonous chemicals are used;

5. In any capacity in the manufacturing of paints, colors, white lead, or brick tile or kindred products, in any place where goods of alcoholic content are manufactured, bottled, or sold for consumption on the premises, except in places (i) licensed pursuant to subdivision 6 of § 4.1-206.1, provided that a child employed at the premises shall not serve or dispense in any manner alcoholic beverages or (ii) where the sale of alcoholic beverages is merely incidental to the main business actually conducted, or to deliver alcoholic goods;
6. In any capacity in or about excavation, demolition, roofing, wrecking, or shipbreaking operations;
7. As a driver or a helper on an automobile, truck, or commercial vehicle; however, children who are at least 17 years of age may drive automobiles or trucks on public roadways if:
 - a. The automobile or truck does not exceed 6,000 pounds gross vehicle weight, the vehicle is equipped with seat belts for the driver and any passengers, and the employer requires the employee to use the seatbelts when driving the automobile or truck;
 - b. Driving is restricted to daylight hours;
 - c. The employee has a valid state license for the type of driving involved and has no record of any moving violations at the time of hire;
 - d. The employee has successfully completed a state-approved driver education course;
 - e. The driving does not involve (i) the towing of vehicles; (ii) route deliveries or route sales; (iii) the transportation for hire of property, goods, or passengers; (iv) urgent, time-sensitive deliveries; or (v) the transporting at any time of more than three passengers, including the employees of the employer;
 - f. The driving performed by the employee does not involve more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the employee's employer to a customer;
 - g. The driving performed by the employee does not involve more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers, other than employees of the employer;
 - h. The driving takes place within a 30-mile radius of the employee's place of employment; and
 - i. The driving is only occasional and incidental to the employee's employment and involves no more than one third of the employee's work time in any workday and no more than 20 percent work time in any workweek;
8. In logging or sawmilling or in any lath mill, shingle mill, or cooperage-stock mill or in any occupation involving slaughtering, meatpacking, processing, or rendering;
9. In any occupation determined and declared hazardous by rules and regulations promulgated by the Commissioner of Labor and Industry, except as otherwise provided in subsection D.

Non-Ag, Under 16:

B. Except as part of a regular work-training program in accordance with §§ 40.1-88 and 40.1-89, no child under 16 years of age shall be employed, permitted, or suffered to work:

1. In any manufacturing or mechanical establishment; in any commercial cannery; in the operation of any automatic passenger or freight elevator; in any dance studio; in any hospital, nursing home, clinic, or other establishment providing care for resident patients as a laboratory helper, therapist, orderly, or nurse's aide; in the service of any veterinarian while treating farm animals or horses; in any warehouse; in processing work in any laundry or dry cleaning establishment; in any undertaking establishment or funeral home; in any curb service restaurant; in hotel

and motel room service; in any brick, coal, or lumber yard or ice plant; or in ushering in theaters. Children 14 years of age or older may be engaged in office work of a clerical nature in bona fide office rooms in the above types of establishments.

2. In any scaffolding work or construction trade; in any outdoor theater, cabaret, carnival, fair, floor show, pool hall, club, or roadhouse; or as a lifeguard at a beach.

Non-Ag, 14:

C. Children 14 years of age or older may be employed by dry cleaning or laundry establishments in branch stores where no processing is done on the premises and in hospitals, nursing homes, and clinics where they may be engaged in kitchen work, tray service, or room and hall cleaning. Children 14 years of age or older may be employed in bowling alleys completely equipped with automatic pin setters, but not in or about such machines, and in soda fountains, restaurants, and hotel and motel food service departments. Children 14 years of age or older may work as gatekeepers and in concessions at swimming pools and may be employed by concessionaires operating on beaches where their duties and work pertain to the handling and distribution of beach chairs, umbrellas, floats, and other similar or related beach equipment.

Ag:

Generally, hazardous occupations for minors under 16 are aligned with those listed in the FLSA and other hazardous occupation orders as outlined by the Secretary of Labor.

Notwithstanding the provisions listed above-

Ag, 16:

1. Children age 16 years or older employed on farms, in gardens, or in orchards may operate, assist in operating, or otherwise perform work involving a truck, excluding a tractor trailer, or farm vehicle, as defined in § 46.2-1099, in their employment;

Ag, 14:

2. Children age 14 years or older employed on farms, in gardens, or in orchards may perform work as a helper on a truck or commercial vehicle in their employment, while engaged in such work exclusively on a farm, in a garden, or in an orchard;

AGE VERIFICATION:

Non-Ag: Age certification is mandatory for employment in Virginia for minors 14 and 15, and optional for minors over 16. Proper proof-of-age documentation must be presented to the employer to verify age before hiring.

Ag: Age certification is required for minors working in agriculture who are under the age of 18 (must be provided on request).

EMPLOYMENT CERTIFICATION:

Non-Ag: Employment Certificates are mandatory in Virginia for minors under 16. The certificate must be acquired before the child is hired.

Ag: No employment certificate is required for minors working in agriculture.

RECORD KEEPING:

Employers employing minors under sixteen years of age are required to keep a time book or time cards or other appropriate records for each minor which show the beginning and ending time of work each day together with the amount of time designated as a free-from-duty meal period, which is deductible from the schedule of hours of work.

BREAKS:

Young employees are not permitted to work for more than five hours continuously without an interval of at least thirty minutes for a lunch period.

Notes

- [i] See: "More than 100 Children Illegally Employed in Hazardous Jobs, Federal Investigation Finds; Food Sanitation Contractor Pays \$1.5m in Penalties." DOL, February 17, 2023. <http://www.dol.gov/newsroom/releases/whd/whd20230217-1>.
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- [iv] See Appendix A for a broad comparison of child labor standards.
- [v] See: Worley, Linda P. "Working Adolescents: Implications for Counselors." Jstor. Accessed February 12, 2023. <https://www.jstor.org/stable/23901328>.
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- [viii] "Child Labor Enforcement: Keeping Young Workers Safe." DOL. Accessed February 13, 2024. <https://www.dol.gov/agencies/whd/data/child-labor>.
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- [xi] Dreier, Hannah. "As Migrant Children Were Put to Work, U.S. Ignored Warnings." *The New York Times*, April 17, 2023. <https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html>.
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- [xiii] Dreier, Hannah, and Meridith Kohut. "The Kids on the Night Shift." *The New York Times*, September 19, 2023. <https://www.nytimes.com/2023/09/18/magazine/child-labor-dangerous-jobs.html>.
- [xiv] Kaori Gurley, Lauren, and Emmanuel Martinez. "Fast-Food Giants Overwork Teenagers, Driving America's Child Labor Crisis." *The Washington Post*, January 14, 2024. <https://www.washingtonpost.com/business/2024/01/14/child-labor-fast-food-franchises/>.
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- [xvii] "Department of Labor Assesses Operators of Utah Amusement Centers \$167k in Penalties for Child Labor Violations in Syracuse, West Jordan." DOL, August 24, 2023. <https://www.dol.gov/newsroom/releases/whd/whd20230824>.
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