

## CHILD LABOR

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		<b>1.0 AUTHORITY</b>
		<b>1.1 --- Commissioner of Labor &amp; Industries</b>
		<b>1.2 --- Wage and Hour Commission</b>
		<b>2.0 EMPLOYMENT RELATIONSHIP</b>
		<b>2.1 --- Generally</b>
		<b>2.2 --- Independent Contractors (<i>see also</i> Ch. IX, sec. 2.3)</b>
		<b>2.3 --- Volunteers/Interns</b>
		<b>3.0 EMPLOYMENT CERTIFICATES</b>
		□ Based on respondent's admissions and credible evidence that substantiated the agency's allegations, respondent was found liable for civil penalties for failing to post a validated employment certificate in a conspicuous place readily visible to all employees. ---- <b><i>In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 191 (2009).</i></b>
		□ Based on respondent's admissions and credible evidence that substantiated the agency's allegations, respondent was found liable for civil penalties for employing at least two minor children between June and August 2007 without obtaining an annual employment certificate to hire minors. ---- <b><i>In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 191 (2009).</i></b>
		<b>4.0 POSTING REQUIREMENTS</b>
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		<b>5.3 --- Verifying Age of Minors</b>

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□ An acceptable proof of age document includes, but is not limited to, a birth certificate, a state-issued driver's license, a U. S. Passport, or other acceptable proof approved by BOLI. ----- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 193 (2009).*

□ Respondent had an affirmative duty to retain a record of the document used to verify each minor employee's age. A notation in each minor's personnel file identifying the document used to verify the minor's age satisfies the requirement. ----- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 193 (2009).*

□ Based on respondent's admissions and credible evidence that substantiated the agency's allegations, respondent was found liable for civil penalties for hiring minors without first verifying their ages. ----- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 191 (2009).*

### 6.0 WORK PERMITS

### 7.0 OCCUPATION OR INDUSTRY

#### 7.1 --- Agriculture

#### 7.2 --- Domestic Work

#### 7.3 --- Door to Door Sales

#### 7.4 --- Entertainment

#### 7.5 --- Hazardous Occupations

□ Children are particularly vulnerable to employer exploitation; hence, child labor laws hold employers to certain standards that enable minors to participate in the workforce without risk to life and limb and that protect them from the vagaries of youth, including occasional lapses of judgment. To that end, certain occupations have been deemed inherently hazardous to the health and well being of minors and employers are prohibited from employing minors in those jobs. Operating a meat slicer is one of those jobs. ----- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 195 (2009).*

□ Based on respondent's admissions and credible evidence that substantiated the agency's allegations, respondent was found liable for civil penalties for employing at least one minor to engage in work particularly hazardous for minors – operating a meat slicer – that resulted in an injury to the minor. ----- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 191, 194 (2009).*

#### 7.6 --- Newspaper Carriers/Vendors

### 8.0 HOURS OF EMPLOYMENT

#### 8.1 --- Under 18 Years of Age

#### 8.2 --- Under 16 Years of Age

##### 8.2.1 --- Generally

##### 8.2.2 --- Exceptions

#### 8.3 --- Under 14 Years of Age

### 9.0 OVERTIME - SPECIAL PERMIT

### 10.0 OTHER TERMS AND CONDITIONS OF EMPLOYMENT (see generally Ch. IX)

#### 10.1 --- Meal Periods and Rest Periods

#### 10.2 --- Wages

### 11.0 DEFENSES TO CHARGES OF CHILD LABOR LAW VIOLATIONS

□ Respondent's argument that its minor employee's injury was not serious and was a result of the employee's own folly only demonstrated respondent's failure to understand the purpose of the child labor laws. ----- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 195 (2009).*

□ The fact that minors were hired as temporary help for a short period did not negate respondent's duty to comply with child labor laws. ----- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 194 (2009).*

□ Respondent's two violations of employing minors without first verifying their age was aggravated by the fact that respondent's president had an opportunity to comply when he interviewed the minors before hiring them. Verifying their ages at that time and making a notation in their personnel files identifying the document used to verify their ages could have been done without any degree of difficulty. ----- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 193 (2009).*

□ The forum held that respondent's argument that it lacked sufficient opportunity to comply with the statute and rules had no merit. ----- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 193 (2009).*

### 12.0 ENFORCEMENT ACTIONS (see also Ch. I -- Admin. Proc.)

#### 12.1 --- Constitutionality

#### 12.2 --- Respondents

#### 12.3 --- Investigation and Hearing

#### 12.4 --- Civil Penalties

##### 12.4.1 --- Generally

□ The maximum civil penalty for any one child labor violation is \$1,000 and the actual amount depends upon all the facts and any mitigating and aggravating circumstances. ----- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 191 (2009).*

□ Each violation of Oregon's child labor laws is a separate and distinct offense. ----- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 191 (2009).*

□ When determining the actual civil penalty amount, the forum must consider a respondent's history in taking all necessary measures to prevent or correct violations; any prior violations, if any; the magnitude and seriousness of the violations; the opportunity and degree of difficulty in complying with the statutes and rules; and any mitigating circumstances. ----- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 191-92 (2009).*

##### 12.4.2 --- Employing Minors Without Obtaining a Validated Employment Certificate (ORS 653.307 & OAR 839-021-0020(2))

□ The forum found that respondent's failure to apply for and obtain a validated employment certificate to hire minors in 2007 constituted one violation. Considering both the aggravating and mitigating circumstances, the forum assessed a civil penalty of \$1,000 for

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respondent's violation of ORS 653.307 and OAR 839-021-0020(2). ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 193 (2009).*

### 12.4.3 --- Employing Minors Without First Verifying the Age of Each Minor (ORS 653.307 & OAR 839-021-0185)

□ Although respondent had no prior history of child labor violations and cooperated with the agency during the investigation, respondent's additional violations could have been prevented if respondent had complied with the law in the first place. After considering the aggravating and mitigating circumstances, the forum concluded that respondent was liable for \$2,000 (\$1,000 per violation) as an appropriate penalty for two violations of OAR 839-021-0185. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 194 (2009).*

### 12.4.4 --- Employing a Minors to Engage in Work Declared to be Particularly Hazardous to Minors (ORS 653.307 & OAR 839-021-0104)

□ After considering the aggravating and mitigating circumstances, the forum concluded that respondent was liable for the maximum penalty of \$1,000 for one violation of OAR 839-021-0104 and Federal Hazardous Occupations Order No. 10 based on allowing a minor to operate a meat slicer. Had the agency alleged a continuing violation, the forum would have assessed a \$1,000 civil penalty for each day the minor used the meat slicer while in respondent's employ. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 195 (2009).*

### 12.4.5 --- Failure to Post a Validated Employment Certificate (ORS 653.307 & OAR 839-021-0220(3))

□ Respondent's failure to post a validated employment certificate constituted one violation and, after considering all of the aggravating and mitigating circumstances. The forum assessed a \$1,000 civil penalty for respondent's violation of OAR 839-021-0220(3). ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 195 (2009).*

### 12.4.6 --- Aggravating Circumstances

□ Respondent's violation of OAR 839-021-0104 was aggravated by evidence showing that respondent ignored the concerns of a minor and her mother that respondent's ill-fitting metal mesh glove for use with a meat slicer that was designed to fit an adult, not a child, posed an equal if not greater danger to the minor if she used it. Had respondent truly been concerned about the minor's safety, it would not have required her to operate the meat slicer in the first place. If anything, respondent demonstrated complete disregard for her safety by not even responding to her concerns about the ill-fitting glove. Additionally, had respondent complied with the child labor law requiring a validated employment certificate to hire minors, the injury would not have occurred because respondent would have been required to either change the minor's duties to exclude performing hazardous work or not hire minors. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 194 (2009).*

□ Respondent's two violations of employing minors without first verifying their age was aggravated by the fact that Respondent's president had an opportunity to comply when he interviewed the minors before hiring them. Verifying their ages at that time and making a notation in their personnel files identifying the document used to verify their ages could have been done without any degree of difficulty. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 193-94 (2009).*

□ Respondent's two violations of employing minors without first verifying their age was aggravated by the fact that Respondent's president knew both employees were minors. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 193 (2009).*

□ Respondent's two violations of employing minors without first verifying their age were serious because the purpose of verifying a minor's age before hire is to ensure that the minor is employed under proper working conditions and with proper hours for that specific age. --- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 193 (2009).*

□ Respondent's two violations of employing minors without first verifying their age were substantially aggravated by a bodily injury to one minor incurred while the minor was performing inherently hazardous work. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 193 (2009).*

□ The agency alleged and proved by a preponderance of credible evidence that respondent knew two employees were minors when hired and that one was operating the meat slicer during her employment. The agency also proved that respondent knew the metal mesh glove did not fit the minor's hand, but chose to ignore her safety concerns while allowing her to continue operating the meat slicer. Those facts constituted aggravating circumstances that overcame mitigating circumstances in the case. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 192-93 (2009).*

□ When arriving at the actual amount of civil penalties to be imposed, the forum must consider whether a minor was injured while employed in violation of the statute and rules. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 192 (2009).*

□ Respondent's violations of employing two minors without first applying for and obtaining a validated employment certificate were substantially aggravated by the injury of one of the minors while she was performing inherently hazardous work. The violations were further aggravated because respondent's failure to file a validated employment certificate thwarts the agency's ability to enforce the child labor laws. An application for an employment certificate must include a description of the duties to be performed by the minors and a list of the machinery or other equipment to be used by the minors. If respondent had complied with the law, the agency would have presumably denied the application and respondent would have terminated the minor's employment or changed her job duties to exclude hazardous ones, thereby preventing her injury. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 192 (2009).*

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### 12.4.7 --- Mitigating Circumstances

□ Evidence that respondent's president trained an injured minor employee how to use the meat slicer and warned all employees, including the minor, that they would be fired if they did not use respondent's metal mesh glove was not a mitigating circumstance. The minor should not have been operating a meat slicer, glove or no glove. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 194 (2009).*

□ As mitigating circumstances to respondent's violation of employing minors in work particularly hazardous to a minor, respondent alleged that it took reasonable steps to ensure that minors were working in a safe environment and in a safe manner, that a minor was not seriously injured, and that the minor was injured "as a result of her own folly" in not following respondent's "posted" safety guidelines or express safety instructions given to all employees. This argument was completely negated by respondent's admission that it did not obtain a validated employment certificate or verify the ages of the two minors. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 194 (2009).*

□ The child labor laws were designed to ensure the safety of minors and respondent's failure to comply demonstrated that it did not take reasonable steps to protect minors in its employ. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 194 (2009).*

□ As mitigation, credible evidence showed that respondent had no prior offenses and that its failure to obtain a validated employment certificate to employ minors in 2007 was its first violation of record. Additionally, the magnitude of the violation was relatively small because respondent hired two minors, one of whom was employed about two weeks and the other for three days, and one of the minors did not engage in hazardous work. Evidence also showed respondent cooperated during the agency's child labor investigation. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 192-93 (2009).*

□ When respondent had been in business for at least two years and should have anticipated an increase in business during the months that particular local events are scheduled, the forum rejected respondent's mitigation argument that it lacked sufficient opportunity to obtain an employment certificate because it was shorthanded during an anticipated busy period. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 192 (2009).*

□ Respondents are required to provide the commissioner with evidence of any mitigating circumstances. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 192 (2009).*

### 12.4.8 --- Repeated Violations

□ Willful and repeated violations are considered to be of such seriousness and magnitude that no less than \$500 for each willful and repeated violation will be imposed when the forum determines to impose a civil penalty. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 191 (2009).*

### 12.4.9 --- Willfulness of Violations (see also Ch. IX, sec. 13.1.2)

□ Willful and repeated violations are considered to be of such seriousness and magnitude that no less than \$500 for each willful and repeated violation will be imposed when the forum determines to impose a civil penalty. ---- *In the Matter of Spud Cellar Deli, Inc., 30 BOLI 185, 191 (2009).*

### 12.4.10 --- Statutory Exemptions

### 12.5 --- Revocation of Right to Hire Minors