

## A-Z Guide

# YOUNG PERSONS



## Contents

Contents	1
Use This Guide to Understand	2
Who is a 'Young Person'?	2
At the Start of Employment	2
During Employment	3
For Your Business	7

# Use This Guide to Understand

- How to employ a young person
- How to ensure you are meeting the minimum legal requirements in key areas such as hours of work, pay, tax, and health and safety
- Special rules that apply to young persons
- Particular vulnerabilities such as alcohol, gambling and driving, and what to do about them

## Who is a 'Young Person'?

There is no single definition of who a 'young person' is, but there are particular rules that apply under various Acts to people of different age groups. Having special rules for young people recognises that this group can be particularly vulnerable in the workplace.

This A-Z Guide highlights some issues that you need to consider when employing young people. These issues include whether the person is required to be at school during the hours of work, whether they are old enough to understand the terms of their employment agreement, tax rules that apply to school children, and minimum wage rates. Duties in relation to young people under health and safety legislation are also set out in this guide.

## At the Start of Employment

### What hours can a young person work?

Everyone who is not a foreign student must be enrolled at a school at all times until the day of their 16th birthday. Unless you have been provided with a certificate of exemption for a young person, you must not employ them during school hours. To do so is an offence under the Education Act 1989 which carries a fine of up to \$1,000.

If you have any doubts or concerns about a young person's ability to work for you in a full-time capacity, or even in a part-time capacity for certain hours, then you should ask them to provide you with proof of their age.

### Can a young person sign an employment agreement?

A minor (person under the age of 18) has legal status with regard to the formation of contracts, including employment agreements. The general rule is that a contract of service (i.e. an employment agreement) entered into by a minor is to have the same effect as if they were an adult. A young person is able to sign an employment agreement without the need for their parent or guardian's consent.

If the 'consideration' (remuneration or payment) for the employment agreement is inadequate or unconscionable, or if any of the provisions of the agreement are harsh or oppressive the Courts have the power under the Contract and Commercial Law Act to:

- Cancel the agreement
- Allow the minor, on the conditions the Court thinks just, to cancel the contract
- Compensate or order the restitution of property



The Employment Relations Act 2000 defines an “employee” as “a person of any age employed to do any work for hire or reward under a contract of service”. Therefore a child or young person who is in an employment relationship is an employee within the meaning of the Act and has the same rights under the Act as all other employees. A young person is also able to join a Union.

The Employment Relations Authority may declare that bargaining for an individual employment agreement is unfair if the employer knows, or ought to know, that the person is too young to adequately understand the provisions or implications of the agreement.

Refer to the following **A-Z Guides** for more information:

- **Bargaining**
- **Employment Relations Act 2000**
- **Individual Employment Agreements**
- **Undue Influence and Duress**

## Can I refuse to employ someone because they are young?

If the young person is under 16 years of age, they cannot rely on the Human Rights Act 1993 to challenge this type of decision. The Act prevents discrimination on the basis of age but defines “age” as being 16 years and over. A person under 16 years old can be lawfully discriminated against on that basis.

A person aged 16 and over must not be discriminated against on the basis of their age. Overall, this is a practical decision for your business. You should consider whether the person, although young, is capable of performing the work required in a safe and suitable way.

Refer to the **A-Z Guide** on **Discrimination in Employment** for more information.

## During Employment

### Health and safety restrictions

The Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 specify duties of employers (and other persons in control of places of work) in relation to young persons. These duties are added to the duties of employers to ensure the health and safety of employees at work in the Health and Safety at Work Act 2015.

Employers have a responsibility to be careful about having young persons in particular work environments.

#### *Under 15s*

Amongst the restrictions, persons under the age of 15 must not work or be present in any area of a workplace:

- At any time when goods are being prepared or manufactured for trade or sale
- At any time when any construction work is being carried out in that area
- At any time when any logging operation or tree-felling operation is being carried out
- And at any time when any work is being carried out that is likely to cause harm to the health and safety of a person under the age of 15
- At any time when work is carried out in the area that involves the use of hazardous substances

## Young Persons

However, a person under 15 may work or be present in a part of the area that is used only for selling goods or services. They can also be present in any part of the above areas to which the public generally has access, or where they are under the direct supervision of an adult in that area, or on a guided tour of the area.

No person under the age of 15 should be required to lift any weight or perform any task in a workplace, if performing the task or lifting the weight would be likely to be injurious to the person's health.

Employees under 15 must not work at or with any machinery. This includes assisting another person with work at or with machinery.

There are additional restrictions in relation to vehicles – that is, tractors and “self-propelled mobile mechanical plant” (other than a car, truck, motorcycle or machinery that weighs 700kg or less). No person under 15 years of age is permitted to drive a vehicle or ride on the vehicle. Employees must not ride upon any implement (for example, a trailer) that is being drawn by the vehicle.

An exception to the requirement not to drive a tractor is where the employee is over 12 years of age, the tractor is being used in agricultural work, and the employee has been fully trained in the safe use of the tractor and any implement that is attached to it.

### Under 16s

Restrictions apply to night work. No person under the age of 16 is permitted to work between the hours of 10pm on any day and 6am on the following day. The exception to this rule is where the employment is in accordance with an approved code of practice relating to the employment of people under the age of 16 between those hours, in the kind of work the person is performing.

Refer to the **A-Z Guides on Health and Safety at Work and Hazard Identification and Management** for information about your general duties to employees.

## Do I have to provide any special facilities for the young person?

Employers of people under the age of 16 must provide them with food, clothing and lodging if they have contracted to do so. If you have failed to make these provisions, and this failure results in the employee's death, life endangerment or permanent injury it will be an offence under the Crimes Act 1961. The offence may result in imprisonment for up to 5 years.

## What is the minimum wage for a young person?

The provisions of the Minimum Wage Act 1983 apply to employees who are 16 years of age and over. A starting-out rate may apply to 16 and 17 year olds and an adult rate applies to employees 18 years or over.

If an employee is under the age of 16 then the Act does not apply and it is lawful to pay such an employee below the minimum wage rates.

If you employ a person who is younger than 20 years of age, the Minimum Wage Act 1983 and the Employment Relations Act 2000 require that you record that employee's age in your wage and time records.

## Young Persons

The Minimum Wage Order provides for a starting-out wage rate for three groups, who are eligible unless they are training or supervising others:

- 16 and 17 year olds in their first six months of work with every new employer. After six months that employer must pay the young person at least the adult minimum wage.
- 18 and 19 year olds who have been paid a benefit for six months or longer, and who have not completed six months of continuous work with any employer since starting on a benefit. After six months the employer and any future employers must pay the young person at least the adult minimum wage even if they should return to further time on benefit.
- 16 to 19 year old workers in a recognised industry training course involving at least 40 credits per year. Once the young person stops doing at least 40 credits a year they must be paid at least the adult minimum wage, provided they do not meet other criteria for a starting-out wage.

The starting-out wage is set at 80 per cent of the adult minimum wage.

The minimum wage rates are reviewed every year and changes take effect in March. Refer to the **A-Z Guide** on the **Minimum Wage Act 1983** for more information.

## Tax rates for young people

All young persons, including school children, are taxed at the adult rate. The tax credit for children was repealed from 1 April 2012. The tax credit had covered the tax on the first \$2,340 of income.

What this means for employers:

- From 1 April 2013, employers must deduct PAYE from salary/wages or deduct tax from schedular payments.
- For those school children who are existing members of Kiwisaver, employee contributions will need to be deducted at 3 percent. No employer contributions are necessary for those employees under 18 years.
- Employees who are school children must give employers a completed IR330 form.
- Employers will need to include their details in the employer monthly schedule (EMS).

Refer to the **A-Z Guide** on **PAYE** for information about tax codes and PAYE deductions.

## Supervision

Employers must not leave a person under the age of 14 without reasonable care and supervision, for a time that is unreasonable, or under conditions that are unreasonable in the circumstances. Failure to comply with this requirement is an offence under the Summary Offences Act 1981.

## Alcohol

The Land Transport Act 1998 prescribes a **zero alcohol** limit for drivers under the age of 20.

Young persons under the age of 18 must not be employed in any capacity in a “restricted area” while the area is open for the sale of liquor. Some exceptions apply for employees engaged in preparing and serving meals, cleaning and maintaining the area or equipment, stocktaking and checking or removing cash.

Under the Sale and Supply of Alcohol Act 2012 persons under the age of 18 must not be supplied with alcohol. An exemption applies where the supplier believes, on reasonable grounds, that they have the express consent of the parent or guardian of the minor and supplies the alcohol in a responsible manner. You could be fined up to \$2,000 if you breach this law.

You can obtain further information about alcohol restrictions for young workers from the relevant licensing authority.

## Gambling

The Gambling Act 2003 prohibits anyone under the age of 20 from being in the gambling area of a casino. The part of the casino that is designated as the “gambling area” is specified on the casino’s license.

Within other venues, persons under the age of 18 are prohibited from participating in “class 4” (generally involving gaming machines) gambling. To this end, it is important that employers take steps to ensure no person under the age of 18 (including employees, volunteers and contractors) is in an area where “class 4” gambling is taking place.

Non-compliance with these requirements attracts a penalty of up to \$5,000 for companies.

Further information about gambling restrictions may be sought from the relevant licensing authority.

# For Your Business

Employing young persons or providing them with work experience can be an enriching experience for any organisation, but you need to know how employing them is sometimes different from employing adults. If you have any questions about employing a young person that is not covered in this guide, contact the EMA AdviceLine Team on 0800 300 362.

## Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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