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1 **CHAPTER 817. CHILD LABOR**

2 **SUBCHAPTER A. GENERAL PROVISIONS**

3
4 **§817.1. Title and Purpose.**

- 5
- 6 (a) Title. These rules may be cited as the Texas Child Labor Rules.
- 7
- 8 (b) Purpose. The purpose of these rules is to implement and interpret the provisions of
- 9 the Texas Labor Code, Chapter 51, Employment of Children.

10 *The provisions of this §817.1 adopted to be effective January 12, 1998, 23 TexReg 150*

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13
14
15 **§817.2. Definitions.**

16
17 The following words and terms, when used in this chapter or in Texas Labor Code,

18 Chapter 51, shall have the following meanings.

- 19
- 20 (1) Applicant--A child or the child's parent, legal guardian, legal custodian, or
- 21 prospective employer.
- 22
- 23 (2) Business or enterprise operated by a parent or custodian--A business or
- 24 enterprise in which a parent or custodian exerts active direct control over the
- 25 entire operation of the business or enterprise by making day-to-day decisions
- 26 affecting basic income and work assignments, hiring and firing employees, and
- 27 exercising direct supervision of the work.
- 28
- 29 (3) Business or enterprise owned by a parent or custodian--A business or
- 30 enterprise owned by a parent or custodian as a sole proprietor, a partner in a
- 31 partnership, or an officer or member of a corporation.
- 32
- 33 (4) Casual employment--Employment that is irregular or intermittent and not on a
- 34 scheduled basis.
- 35
- 36 (5) Child--An individual under 18 years of age.
- 37
- 38 (6) Child actor--A child under the age of 14 who is to be employed as an actor or
- 39 other performer.
- 40
- 41 (7) Child actor extra--A child under the age of 14 who is employed as an extra
- 42 without any speaking, singing, or dancing roles, usually in the background of
- 43 the performance.
- 44

- 1 (8) Direct supervision of the parent or custodian--A child is employed under the
2 direct supervision of a parent or custodian when the parent or custodian
3 controls, directs, and supervises all activities of the child.
4
- 5 (9) Employee--An individual who is employed by an employer for compensation.
6
- 7 (10) Employer--An entity who employs one or more employees or acts directly or
8 indirectly in the interests of an employer in relation to an employee.
9
- 10 (11) Employment--Any service, including service in interstate commerce, that is
11 performed for compensation or under a contract of hire, whether written, oral,
12 express, or implied.
13
- 14 (12) Executive director--The executive director of the Texas Workforce
15 Commission or the executive director's designee.
16
- 17 (13) Private school--As set forth in Texas Education Code, Chapter 5, a school that
18 offers a course of instruction for students in one or more grades from
19 prekindergarten through grade 12, and is not operated by a governmental
20 entity.
21

22 *The provisions of this §817.2 adopted to be effective January 12, 1998, 23 TexReg 150;*
23 *amended to be effective August 11, 2014, 39 TexReg 6065*
24

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27 **§817.3. Employment of Children.** 28

29 Employment of children not permitted by Subchapter B of this chapter (relating to
30 Limitations on the Employment of Children), Subchapter C of this chapter (relating to
31 Employment of Child Actors), or the Texas Labor Code, Chapter 51, is prohibited.
32

33 *The provisions of this §817.3 adopted to be effective January 12, 1998, 23 TexReg 150*
34

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37 **§817.4. Statement of Commission Intent.** 38

- 39 (a) In adopting §817.21 of this title (relating to Limitations on the Employment of 14
40 and 15 Year Old Children) and §817.23 of this title (relating to Limitations on the
41 Employment of 16 and 17 Year Old Children), the Commission intends for the
42 federal child labor laws to govern the employment of children in Texas, unless a
43 provision of this chapter or Texas Labor Code, Chapter 51, clearly indicates
44 otherwise. The Commission so intends only to the extent the federal laws are
45 consistent with Texas Labor Code, Chapter 51.
46

- 1 (b) In adopting §817.24 of this title (relating to Limitations on the Employment of
2 Children to Solicit), the Commission recognizes and hereby implements the
3 legislative intent of Texas Labor Code §51.0145 to apply to the employment of
4 children to sell or solicit products or services usually in a door-to-door manner, but
5 which occasionally takes other forms, such as in parking lots or other common areas.
6 The activity that is the subject of this regulation has been variously labeled over the
7 years as candy sales, door-to-door sales, youth peddling, traveling youth crews, and
8 other names. The activity usually involves one or more recruiters or drivers and at
9 least one product supplier. The operation may involve taking children from lower
10 income neighborhoods to sell in higher income neighborhoods, using a name and
11 presentation that suggests the activity is aimed primarily at keeping the children out
12 of gangs and off drugs.
13

14 *The provisions of this §817.4 adopted to be effective January 12, 1998, 23 TexReg 150;*
15 *amended to be effective April 22, 1999, 24 TexReg 3111; amended to be effective November*
16 *18, 1999, 24 TexReg 10140*
17

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19

20 **§817.5. Certificate of Age.**
21

- 22 (a) To request a certificate of age, an applicant must submit the following:
23
24 (1) a completed application on a form provided by the Commission;
25
26 (2) a recent photograph (color or black and white) approximately 1 1/2 inches by 1
27 1/2 inches, showing a full head shot of the applicant; and
28
29 (3) proof of age. A copy of one of the following documents is required as proof of
30 age:
31
32 (A) birth certificate;
33
34 (B) baptismal certificate showing the date of birth;
35
36 (C) life insurance policy insuring the life of the child reflecting the date of
37 birth;
38
39 (D) passport or certificate of arrival in the United States issued not more than
40 one year prior to the date of application for certificate; or
41
42 (E) the school record or the school-census record of the age of the child,
43 together with the sworn statement of a parent, guardian, or person having
44 custody of the child as to the age of the child and also a certificate signed
45 by a physician specifying his opinion as to the age of the child, and the

1 height, weight, and other facts relating to development upon which his
2 opinion concerning age is based.

- 3
4 (b) Certificates of age are effective from the date of their issuance until the applicant
5 reaches 18 years of age. No renewal is necessary, but lost certificates may be
6 reissued upon new application.
7

8 *The provisions of this §817.5 adopted to be effective January 12, 1998, 23 TexReg 150*

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12 **§817.6. Appeals.**

13
14 Hearings conducted under Texas Labor Code, Chapter 51, are subject to the rules and
15 hearing procedures set out in the Unemployment Insurance Rules at 40 TAC Chapter
16 815, except to the extent that such sections are clearly inapplicable or contrary to
17 provisions set out under the Texas Child Labor Rules or under Texas Labor Code,
18 Chapter 51.
19

20 *The provisions of this §817.6 adopted to be effective November 6, 2000, 25 TexReg 11104*

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24 **SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN**

25
26 **§817.21. Limitations on the Employment of 14- and 15-Year-Old Children.**

27
28 The Commission adopts by reference 29 Code of Federal Regulations (CFR) §§570.31 -
29 570.34 and §§570.70 - 570.72 in effect on the date this section is adopted or the successor
30 rule to any such regulation adopted by the U.S. Department of Labor, as state rules
31 governing the employment of 14- and 15-year-old children in Texas, to the extent that
32 they are consistent with the Fair Labor Standards Act (FLSA), 29 United States Code
33 (USC) §201 et seq. In the event of any inconsistency between federal regulations and
34 FLSA, FLSA shall take precedence. These rules apply to such employment whether or
35 not that employment is subject to FLSA. The application of this section is limited to the
36 extent it is consistent with Texas Labor Code, Chapter 51.
37

38 *The provisions of this §817.21 adopted to be effective January 12, 1998, 23 TexReg 150;*
39 *amended to be effective April 22, 1999, 24 TexReg 3111; amended to be effective August 11,*
40 *2014, 39 TexReg 6065*

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1
2 **§817.22. Hardship Waiver of Hours Requirements for 14 and 15 Year Old Children.**
3

- 4 (a) An applicant applying for a hardship waiver from the limitations on hours worked
5 for 14 and 15 year old children must obtain a certificate of age under the provisions
6 of §817.5 of this title (relating to Certificate of Age) and file a hardship application.
7 The applicant may file both applications concurrently.
8
- 9 (b) A hardship application must contain:
- 10
- 11 (1) full details of the prospective employment and the proposed hours to be
12 worked;
- 13
- 14 (2) a written statement that it is necessary for the child to work to support himself
15 or his immediate family, with supporting information;
- 16
- 17 (3) a written statement from the principal of the school in which the child is
18 enrolled as to the advisability of allowing the child to work the hours
19 identified; and
20
- 21 (4) a written statement from the prospective employer. The prospective employer's
22 statement shall provide:
- 23
- 24 (A) that the child will be employed; and
- 25
- 26 (B) full details of the work, including rate of pay, hours to be worked, and
27 expected duration of employment.
28
- 29 (c) A hardship application may contain any other information the applicant believes
30 would support the granting of the waiver.
31
- 32 (d) All waivers shall be valid for one year unless established for a shorter period and
33 may be extended at the sole discretion of the executive director.
34
- 35 (e) After all pertinent information has been reviewed by the Commission, the waiver
36 will be granted or denied. If additional information is needed before a decision is
37 made, the Commission may gather additional facts and schedule a conference to
38 review the merits of the application with interested persons.
39
- 40 (f) At any conference the Commission will be represented by an employee designated
41 by the executive director who shall make a written report to the executive director
42 within 20 working days following the conference. The report shall contain a
43 determination as to whether or not the waiver should be granted. Unless changed by
44 the executive director, the initial determination shall remain in full force and effect.
45 All interested parties will be advised in writing of the final determination of the
46 Commission as soon as practicable. No appeal to the Commissioners is authorized.

- 1
2 (g) This proceeding is not a contested case under the Texas Government Code, Chapter
3 2001, Administrative Procedure Act.
4

5 *The provisions of this §817.22 adopted to be effective January 12, 1998, 23 TexReg 150*

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9 **§817.23. Limitations on the Employment of 16- and 17-Year-Old Children.**
10

11 The Commission adopts by reference 29 CFR §§570.50 - 570.68 in effect on the date this
12 section is adopted or the successor rule to any such regulation adopted by the U.S.
13 Department of Labor, as state rules governing the employment of 16- and 17-year-old
14 children in Texas, to the extent that they are consistent with FLSA, 29 USC §201 et seq.
15 In the event of any inconsistency between federal regulations and FLSA, FLSA shall take
16 precedence. These rules apply to such employment whether or not that employment is
17 subject to FLSA. The application of this section is limited to the extent it is consistent
18 with Texas Labor Code, Chapter 51.
19

20 *The provisions of this §817.23 adopted to be effective January 12, 1998, 23 TexReg 150;*
21 *amended to be effective April 22, 1999, 24 TexReg 3111; amended to be effective August 11,*
22 *2014, 39 TexReg 6065*
23

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26 **§817.24. Limitations on the Employment of Children to Solicit.**
27

- 28 (a) A person may not begin the employment of a child to solicit as defined in Texas
29 Labor Code §51.0145 and as described in §817.4(b) of this Chapter (relating to
30 Statement of Commission Intent), until the Commission's Labor Law Department
31 has received:
32
33 (1) a copy of the signed Parental Consent Form approved by the Commission; and
34
35 (2) the information required by statute to be provided to the individual who gives
36 consent.
37
38 (b) A copy of the Parental Consent Form may be obtained from the Commission's Labor
39 Law Department.
40
41 (c) A person employing a child under Texas Labor Code §51.0145 shall limit each
42 solicitation trip to within a radius of no greater than thirty miles from the child's
43 home, unless the parent or other person identified in Texas Labor Code
44 §51.0145(c)(1) signs a Parental Consent Form in advance of the solicitation trip
45 specifically approving a greater distance.

1 *The provisions of this §817.24 adopted to be effective November 18, 1999, 24 TexReg 10140*

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5 **SUBCHAPTER C. EMPLOYMENT OF CHILD ACTORS**

6
7 **§817.31. Child Actor Authorization.**

- 8
9 (a) A child under 14 years of age may be employed in Texas as a child actor only by
10 compliance with the provisions of this subchapter.
11
12 (b) Every person applying for child actor authorization must submit:
13
14 (1) an application for authorization on a form provided by the Commission and
15 signed by a parent, guardian, or person having custody of the child;
16
17 (2) proof of age; and
18
19 (3) a photograph that complies with §817.5 of this title (relating to Certificate of
20 Age).
21
22 (c) An authorization is effective when issued and expires when the child reaches 14
23 years of age, unless the Commission establishes a shorter time period. Lost
24 authorization certificates may be reissued upon new application.
25

26 *The provisions of this §817.31 adopted to be effective January 12, 1998, 23 TexReg 150*

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29
30 **§817.32. Application Exceptions.**

- 31
32 (a) Special authorization for child actors to be employed as extras is granted without the
33 need for filing an application if the employer or its agent:
34
35 (1) communicates with the Commission prior to the actual work being performed,
36 identifying the employer, the project, the approximate number of extras
37 intended to be employed on the particular project, and the anticipated dates of
38 employment;
39
40 (2) prior to employment, uses reasonable efforts to establish that each prospective
41 child actor extra is under 14 years of age;
42
43 (3) secures the written consent of a parent, guardian, or person having custody of
44 the child to his or her employment as an extra on the particular project;
45

1 (4) notifies all affected school principals of the intent to employ their students as
2 extras, furnishing such details concerning the nature and duration of the work
3 as to give school authorities reasonable information concerning the proposed
4 use of their students in the particular project; and
5

6 (5) submits a written post-production report to the Commission, within 10 days
7 following the last day extras are employed, identifying the name, social
8 security number, date of birth, and inclusive dates of employment for each
9 child actor so employed, certifying compliance with Texas Labor Code,
10 Chapter 51 and this chapter (relating to Child Labor).
11

12 (b) Special authorizations for extras are deemed effective upon employment and expire
13 as soon as one of the following events occurs:
14

15 (1) the child reaches age 14;

16 (2) the child receives a Child Actor Authorization;

17 (3) the parent, guardian, or person having custody of the child revokes consent in
18 writing; or
19

20 (4) the child's employment on the particular project by that employer ends.
21
22

23
24 *The provisions of this §817.32 adopted to be effective January 12, 1998, 23 TexReg 150*
25

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28 **§817.33. Limitations on Employment of Child Actors.**

29
30 No child actor under 14 years of age may be employed:
31

32 (1) in a manner that results in a failure to receive class credits because of
33 unexcused class absences, or any violation of the State Compulsory School
34 Attendance Law, Texas Education Code, §25.085, either as it is presently
35 worded or may hereafter be amended to read, or of any rules promulgated
36 thereunder;
37

38 (2) in a position declared hazardous by the Commission;
39

40 (3) during hours that would not be within the limits set by Texas Labor Code,
41 §51.013, for 14 and 15 year old children, except that the child is permitted,
42 with parental consent, to work during otherwise prohibited hours, so long as
43 the child does not work again for the same employer within 12 hours after
44 completing work for the particular session and does not by being so employed
45 work in excess of eight hours in one day or 48 hours in one week;
46

- 1 (4) where the child is required to use a dressing room that is simultaneously
2 occupied by an adult or by a child of the opposite sex;
- 3
- 4 (5) where the child is not provided with a suitable place to rest or play;
- 5
- 6 (6) where the child is sent to wardrobe, makeup, or hair-dressing, unless the child
7 is under the general supervision of the child's parent, guardian, or person
8 having custody of the child if the parent, guardian or person having custody is
9 physically present at the place of employment;
- 10
- 11 (7) where the child's parent, guardian, or person having custody of the child is
12 prevented from being present at the place of employment while the child is
13 working;
- 14
- 15 (8) where the child's parent, guardian, or person having custody of the child is
16 prevented from being within sight and sound of the child at any time during
17 employment; or
- 18
- 19 (9) for more than two consecutive school days during a school year in which the
20 child is legally required to attend school without being furnished a tutor for the
21 child's continuing education. The tutor shall be certified to teach in Texas by
22 the Texas Education Agency or the State Board for Educator Certification, and
23 shall make reasonable efforts to coordinate subjects and assignments with the
24 child's classroom teachers.

25
26 *The provisions of this §817.33 adopted to be effective January 12, 1998, 23 TexReg 150*

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