

Hiring Teens

IN THE RESTAURANT WORKFORCE

MISSOURI
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HIRING TEENS IN THE RESTAURANT WORKFORCE

Nationwide, teenage employees make up over 30% of the restaurant workforce. The passion to learn and upbeat youthful energy possessed by teens make them ideal employees for many establishments in the food and beverage industry. Restaurants that utilize the skills and talents of young employees correctly can create a workplace that is both enjoyable and productive.

However, employing teens can present unique challenges. A position at a restaurant may be a teenager's first experience in the working world. Because teen employees are often inexperienced and unknowledgeable you may find yourself not only training them on the duties of their specific position, but also how to appropriately act as an employee and co-worker. To ensure the success of your teen employees, it is vital to be knowledgeable about the rules and regulations that may affect their employment.

This is a guide to assist restaurant employers who have decided to hire teenagers as employees. This guide will provide insight into some of the legal requirements that accompany youth employment while offering recommendations to ensure that you and your teen employees are successful as they venture into the workforce.

In This Article:

- Guidelines for hiring based on the age of the employee
- Task and schedule restrictions
- Work Certificates
- Special Considerations
- Federal, State, and Local Laws



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MINIMUM AGE FOR MISSOURI

How young is too young to work? The guidelines for employing teens based on age are outlined in this guide. In the state of Missouri...



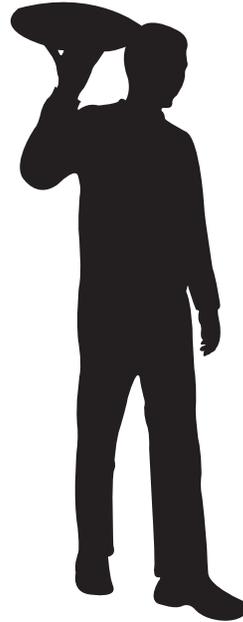
Age 13 & under

Teens under the age of 14 are not permitted to work except under very limited exceptions.



Age 14-15

Teens 14-15 years-old are allowed to work, but only during certain time periods and when certain conditions have been met.



Age 16-17

16-17 year-old teens have fewer restrictions than their younger counterparts.



Age 18 & Up

Teens age 18 and older have almost no restrictions at all.

Certificates:

The employer must keep a copy of the certificate along with the name, age, and address of the employee and a record of the times and hours the employee worked each day. These records must be **retained 2 years**, even if the employee has since turned 16 or their employment has ended.

WORK CERTIFICATES

Employees under the age of 16 years-old must provide a work certificate before they begin working. Applications can be obtained by visiting the Missouri Division of Labor Standards website. There is a separate application to be completed based on whether or not school is in session. It is a best practice to have the teen apply for a new certificate if they are continuing their employment when school resumes session or concludes for the summer.

The form is self-explanatory. The teens and his or her parents complete Section A and the employer completes Section B. The teen must then present the form along with proof of age, in person, to the superintendent of the school district in which they reside, the chief executive officer of the charter school they attend, the principal of the public or private school they attend, the official designee at their schools, or a parent if the teen is home schooled.

TEENS AGE 13 AND UNDER

Employers may hire teens 13 years-old and younger, but only under incredibly narrow circumstances. A business in Missouri may employ a teen under 14 years-old only if the teen's parents own 100% of the business.

Additionally, the parents are required to fully supervise their child as they perform all of their tasks. Merely serving as the manager or supervisor on duty while the teen works is not sufficient. The parents must actually observe the teen as the work is completed. This obligation must be completed by the parent/owner and cannot be delegated.

The stringent guidelines that accompany this type of working arrangement often make it unfeasible for most restaurant owners. However, if you are merely hoping to allow your child to gain experience, this may be appropriately used on a limited basis.

TEENS AGE 14 & 15

Employers may hire 14 and 15 year-olds as long as certain conditions are met. Teens under the age of 16 must obtain a work certificate and the employer must obtain a poster from the Missouri Division of Labor Standards and post it in a conspicuous place.

The state and federal government have recognized that while a teen this age may benefit greatly from the experience of working, all types of work may not be appropriate. Therefore, youths under 16 are forbidden from performing certain types of tasks which may present a heightened potential for physical harm.

TEENS AGE 16 & 17

Teens in this age group are subject to fewer restrictions than their younger counterparts, but not completely free of them. Teens between 16 and 17 are NOT required to hold a work certificate, limited in the number of hours they may work, or restricted to working only during certain time periods.

However, they may NOT:

- Use a meat slicer
- Use power driven dough or batter mixers (other than small countertop mixers)
- Hold employment as a driver
- Use a cardboard compactor
- Bartend or pour alcohol



Prohibited Tasks for 14 & 15 Year-olds:

- Jobs involving cooking except for the use of a deep fryer with mechanisms that lower and lift food out of the grease that is in use
- Jobs involving baking
- Use of power driven dough mixers or bread slicers
- Working with chemicals that require the use of personal protective equipment
- Performing a job requiring them to ride in a vehicle
- Performing any of the other functions that older teens are prohibited from performing
- Working inside of a freezer or cooler (although they may enter into such places momentarily to retrieve items)
- Working in confined spaces
- Loading or unloading a truck
- Using a ladder

School in Session:

*School is considered “in session” when the local public school is in session. Students who attended private schools or are home schooled are subject to the calendar of the local public school, even if their actual school schedule differs.

RESTRICTED WORK HOURS

Because receiving an education is of utmost importance, restrictions have been placed on the hours during which a teen 15 or younger may work. The number of hours to be worked in a week is also restricted to ensure that adequate time may be devoted to schooling.

While school is in session*, teens in this age group may only work:

- During non-school hours
- Between the hours of 7 am and 7 pm
- 3 hours on a school day (including Fridays) or 8 hours on a non-school day
- Up to 18 hours a week

Exceptions:

- Permissible work hours are extended until 9 pm from June 1 through Labor Day
- Up to 40 hours a week may be worked during non-school weeks

PAY REQUIREMENTS

There are no minimum wage exceptions based on age in the state of Missouri. While other states (and federal law) may allow employers to pay minors sub-minimum wage under certain conditions, no such provisions apply here.

Employers are required to pay teens the state-mandated minimum wage as they would any other employee. However, also like other employees, minor employees may receive tips as pay while receiving the reduced hourly wage paid to other tipped employees.

BUSINESSES THAT SELL ALCOHOL

There is a general provision in Missouri Liquor Laws that restricts the sale of alcohol by anyone under the age of 21. Further, no one under the age of 16 is permitted to work in an establishment that derives more than 50% of its gross sales from alcohol. Employees under the age of 21 are never allowed to pour alcohol, mix drinks, or sell drinks over a bar (bartend).

However, teens who are 18 years-old or older may:

- Stock alcohol
- Set up displays containing alcohol
- Ring up alcohol on a cash register
- Accept payment for alcohol

Additionally, employees 18 years-old and older may serve alcoholic beverages as waiters and waitresses in establishments where at least 50% of all sales derive from food. If an establishment that receives at least 50% of its gross sales from the sale of liquor employs anyone under the age of 21 years-old, the employer is required to have an employee who is 21 years-old or older on the premises during all hours of operations.

It is important to note the difference that some provisions are based on 50% of all sales coming from food, while others are based on 50% of gross sales coming from alcohol



GENERAL SAFETY REQUIREMENTS

Regardless of the age of your employees, keep in mind that hazards that may appear obvious to you may not be apparent to someone who has not previously worked in the restaurant industry, or at all. It is the responsibility of the employer to provide comprehensive training to their employees on how to avoid injury. While providing this training, try to think back to your initial experience in the industry and incorrect assumptions you may have made if certain things were not properly explained to you.

Remember, new employees may not recognize the following hazards:



- 1** Plates stacked in the kitchen window area may be incredibly hot due to their proximity to heat lamps. Caution needs to be taken before touching them with bare hands.
- 2** Although a kitchen may have multiple points of entry, certain ones may be designated as an entrance or exit only. Teach new employees about the flow of the kitchen or other areas of the restaurant and make sure they understand that not adhering to that flow may not just be an inconvenience to themselves and others, but may also lead to injuries.
- 3** This may be a teen's first experience using blind spot mirrors to round corners or other tools common in the restaurant industry. Explain to employees the meaning of terms such as "corner," "hot," or "behind you," their significance, and how to properly use and react to them.
- 4** Finally, as this very well could be a teen's first job, don't forget the basics. Advise employees of the importance of lifting with legs as opposed to their backs. Stress the importance of cleaning up spills as soon as they are noticed and providing warnings for others. Encourage teens to report workplace injuries immediately and ensure they are aware of the protocol for doing so.

SOCIAL MEDIA

Social media is quickly becoming a key component to successfully running a restaurant. Having grown up with this technology, teens are in an excellent position to help the business best utilize new technology. Teens can provide insight on the latest technological trends and answer questions about how young people are using social media.

Having said that, if you are going to have a teen employee assist with social media operations, there are precautions that must be taken:

- Prohibit any postings containing content of a sexual nature or on sites intended for mature audiences
- Teens should be advised that posts associated with the use of illegal drugs or alcohol (or any other illegal subject matter) are not allowed
- Advise teens to never post their schedules or any other information that may leave them vulnerable to predators

There are additional requirements for adolescent models. Posting a picture of a teen online for advertising purposes may violate these rules. Consult an attorney before posting photos of minor employees on social media sites.



WORKPLACE DISCRIMINATION

Age Discrimination

Both the Missouri and federal statutes prohibiting discrimination based on age set the minimum age for protection at 40 years-old. This means that there is no cause of action against an employer for discriminating against a teen because of their age. It is important not to favor youth to the detriment of older employees and/or applicants. Showing a preference to younger people may lead to claims against an employer for discriminating against older people. Restaurant employers can protect themselves by simply treating everyone equally, regardless of age.

It is important to remember that some rules may affect older employees differently than teens. Teens today are very tech savvy and are capable of completing tasks on electronic devices, such as cell phones, much faster than some of their older peers. Because of this, it can become difficult to remain consistent when enforcing rules. Employers who have policies concerning the use of electronic devices while on duty should strictly adhere to those policies. Even if the teen is using the device to further the business, adherence to the policy should be maintained to avoid the appearance of unfair preference for the young.

Restaurants often use social media to entice diners. Allowing a young employee to violate the no cell phone policy in order to advertise the business online may cause more problems than the value of the free publicity gained.

Sexual Harassment

When employing teens, it is important to remember that they are closer to childhood than adulthood, meaning that they may not be as emotionally and mentally mature as older employees. There is a high likelihood that you will be their first employer, so they may be unaware of the correct way to conduct themselves professionally.

It is vital for management to proactively educate teenage employees about acceptable and unacceptable behaviors. Rules and policies on the subject should be closely followed and employees who violate them must be reprimanded appropriately. There should not only be a concern about teens potentially engaging in inappropriate behavior, but also becoming the subject of that behavior. Teens are sometimes targeted by unscrupulous adults because of their lack of experience. Adhering to a strict anti-harassment policy is the best way to prevent issues.

Finally, romantic relationships often occur between employees within the restaurant industry. While you may have limited control over relationships formed among employees outside of the workplace, an inappropriate relationship that manifests physically at the workplace may lead to liability for the company. The age of consent in Missouri is 17. Employers should ensure that no actions that may constitute a crime occur at their establishments.

Cyber Bullying

Cyber bullying is considered a form of harassment. If it occurs at the workplace or while the individual is working, liability may attach to the employer. Employers should adopt a strong policy prohibiting cyber bullying and adhere to it strictly.

It may be prudent to also adopt a social media policy that prohibits inappropriate interactions between co-workers on social media sites even if the behavior occurs away from the workplace. A recent court decision found that this type of policy is enforceable when the interaction is directed toward the offender's colleagues, even if specific names are not used and the comment is not made directly to the person being harassed.



REPORTING HARASSMENT

Make sure that teen employees are fully aware of how to report any incidents of harassment. Establish strong guidelines for reporting and distribute them thoroughly. Talk to teens and other employees on a regular basis about the importance of a workplace free of harassment and other forms of discrimination. Ensure that your employees are comfortable coming forward to report an event if, unfortunately, one would occur.

Understand that a teen may be afraid to report an incident as they may blame themselves or falsely believe that it is “just part of the job.” Giving employees multiple options as to whom they may report a problem to—i.e. the general manager, the back of the house manager, the head server, a trainer, and/or someone at the corporate office—creates a more comfortable environment facilitating reporting. This is an opportunity for the restaurant to utilize its diversity as you recognize that an employee’s willingness to report an incident may correspond with the gender or race of the person with whom they file the report.

MISSOURI LAW

Youth employment complaints are investigated by the Missouri Division of Labor Standards, Youth Employment Section. Individuals who wish to report a violation may do so by filing a completed complaint form available on their website. Complaints may be filed anonymously. All complaints are fully investigated and any violations of the law that are uncovered are referred for prosecution.

Criminal Penalties: Violations of Missouri Child Labor Laws are considered Class C Misdemeanors.

Civil Penalties: Range between \$50 and \$1000 per violation.

Each teen employed or allowed to work in violation of these regulations is considered a separate violation. Each day a violation continues is considered a separate violation. The nature/gravity of the violation and the size of the business (measured by number of employees) will be considered in determining the appropriate penalty.

The maximum penalty is considered appropriate in cases involving:

- High likelihood of serious harm to the teen
- Multiple and/or repeat violations
- Children under the age of 14
- The substantial exceeding of maximum work hours
- Falsification/concealment of information
- Failure by employer to assess future compliance

FEDERAL LAW

The US Department of Labor’s Wage and Hour Division and Occupational Safety and Health Administration are the federal agencies that enforce regulations that may affect youth employment. The agencies accept and investigate complaints made by teen employees or may conduct audits without the filing of a complaint.

Violations carry maximum penalties ranging from \$1005 to \$111,616 and/or up to 6 months in jail. The amount of the penalty increases for exigent circumstances such as the finding a violation was repeat or willful or that there was a high likelihood of serious injury or death to the teen.

Teens Reporting Harassment

As young adults, teens are still coming into their own. They may lack the confidence that more seasoned employees hold or second guess themselves as they attempt to maneuver through the working world for the first time. Because of this, it is important to create multiple avenues for reporting incidents of harassment and discrimination.

LOCAL LAW

Cities, counties, and other municipalities may pass their own regulations that may effect teens in the workplace. If a given local law provides more protection to the employee than the state or federal law, it must be followed.

Therefore, it is important to research whether such laws exist in the municipality in which your restaurant operates. When in doubt, it is always wise to contact an attorney to provide you with the correct information.

OTHER EMPLOYMENT BENEFITS

Any other legal rights, benefits, or protections not mentioned here that are subject to state or federal laws apply to teen employees in the same fashion they apply to adults. Even though they may not be viewed as legal adults, as employees they benefit the same way their older peers do. The best method for determining whether or not a particular right pertains to a teen is to simply remove age from the equation.

For example:

17 year-old Mary is a hostess at Sit Down Restaurant. She advises her supervisor Craig that she needs to take 3 weeks of FMLA leave to care for her mother who is recovering from surgery. Craig is unsure if he should approve the request because as a teen Mary doesn't fit the description of someone he would consider to be an appropriate "caregiver" for FMLA purposes.

Despite Mary's age, if she fulfills all of the criteria for FMLA leave, Sit Down Restaurant must provide it to her. Her age has no bearing on her legal right to receive the leave. This is true of any other regulations or policies, both state and local, that effect employees including, but not limited to:

- Sick Leave policies
- Vacation policies
- Workers' Compensation
- Health insurance and similar benefits
- Reasonable accommodations under the ADA



ABOUT THE AUTHORS

This guidebook was written by James N. Foster Jr. and Timothy W. Bubenik of McMahon Berger, LLC. Mr. Foster has extensive experience litigating on behalf of employers nationwide and routinely advises clients on employment-related issues including personnel policies and employment handbooks. Prior to joining McMahon Berger, Mr. Bubenik worked for the US Department of Labor. He uses the knowledge gained from that experience to assist employers as they engage with government agencies. For over half a century McMahon Berger has represented management in issues related to labor and employment law. They have provided legal assistance to the Missouri Restaurant Association for over 30 years.



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