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Pennsylvania Legal Update

Spring 2011

Pennsylvania Child Labor Law

As Pennsylvania teenagers start thinking of summer jobs, they and their parents need to learn about the layers of Pennsylvania law regarding child labor. With the summer hiring season approaching, Pennsylvania employers need to brush up on their legal hiring and reporting restrictions for teen employees.

Peppered with some very old notions, such as language prohibiting "youth peddling" and restrictions on children working with dynamite, the Pennsylvania Child Labor Law (CLL) evolved over the past century as Pennsylvania changed from a farm economy to an industrial economy. Few changes have taken place in recent years and many of the provisions of the CLL may seem antiquated to modern teens, parents, and employers.

The CLL first sets out various age restrictions. Children who are 11 or older may deliver or sell newspapers or other merchandise under supervision. Children between the ages of 12 and 14 may be employed as caddies but may not carry more than one bag at a time or work more than 18 holes in one day. Children between the ages of 14 and 16 are generally employable, provided their employment does not interfere with their school attendance.

The CLL next sets out additional important restrictions that regulate the kinds of work and workplaces, times of day, and length of hours that children may work. Children under 16 may not be employed in any manufacturing or mechanical occupation or process. They may not work in "heavy work" in building trades, in tunnels, "in stripping or assorting tobacco," or on scaffolding. They

may not operate any motor vehicle of any kind or work in a coal mine. Just about the only machinery that a 14-year-old can use legally is a lawnmower. The CLL specifically notes that children 14 and over can work in amusement parks, golf courses, and ski resorts as long as they do not work in any areas where alcohol is served.

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Smoking Ban

Recently, a small Pennsylvania borough council passed a resolution completely banning its police officers from smoking anywhere on, in, or around all borough property, equipment, and vehicles. The officers' union filed a grievance, claiming that a broad ban on tobacco use was an unfair labor practice.

The police officers' case floundered at first when they lost in the initial phases. But apparently doggedly determined to smoke at least at some moments of their workday, they took their claims all the way to the Pennsylvania Supreme Court. Recently, that court decided that once a union and labor management have bargained and are operating according to a contract, they must negotiate changes in "working conditions." Finding that a total ban on smoking during all working hours was a change in "working conditions," the court sent the parties to the bargaining table to address the smoking issue, setting aside the borough council's resolution.

Automobile Insurance Update

When is your automobile insurance company entitled to raise your premium? Can the company completely cancel your coverage?

Pennsylvania law provides consumers with some firm protections against premium increases and policy cancellations. Your premium can be increased by the company if you or someone else in your household insured under the policy is involved in an accident and is at fault for the accident or is convicted of moving traffic violations. However, your insurance company may not increase your premium just because a claim is made against someone insured under your policy.

If your premium is validly increased, your insurance company can add an extra charge, called a surcharge, onto your premium for a chargeable accident or moving traffic violation. Your insurance company has a "surcharge disclosure plan" that it must make available to you when you first purchase the policy. If you want to know more about the potential consequences for accidents, ask your insurer for a copy of its plan.

When an insurance company increases a premium due to the insured's at-fault accidents or moving violation convictions, the insurance company must provide the insured with a detailed summary of how the premium increase was calculated and how long it will be imposed.

If you are in an accident but are not at fault, the insurance company cannot use the accident as the sole reason to cancel or refuse to renew your policy. While the law permits an insurance company some leeway in deciding whether you were

at fault, there are certain kinds of accidents which give rise to the presumption that the insured was *not* at fault. Those include (1) accidents where your vehicle is parked when struck; (2) accidents where you are struck from behind and are not cited for a motor vehicle violation; (3) accidents where the other driver is convicted of a moving violation and you are not; (4) accidents in which you are struck by a hit-and-run vehicle; (5) accidents in which you recover monetary compensation from the other driver; (6) and accidents in which you hit an animal. You can also avoid cancellation if you were involved in an accident while responding to an emergency and you are a paid or a volunteer member of a police or first responder squad.

If your accident does not fall within one of the exclusions listed above, your insurance company has a fairly broad right to cancel your coverage if you are involved in an accident, especially if you are involved in two or more accidents.

Your insurance company may always cancel your policy if you breach the policy by failing to pay your premiums or if your driver's license or vehicle registration is suspended or revoked.

Your insurance company may also cancel your policy if the company discovers that you made false statements about important facts. Insureds are expected to complete the policy application and any subsequent questionnaires truthfully and accurately. Failing to disclose a speeding ticket or a physical disability in response to a question on an application or an inquiry from the company can lead to cancellation if the company discovers your

omission. An insured's innocent omission on an application or questionnaire is not enough to support policy cancellation. The company must prove that the insured knew that he or she was acting dishonestly and also must prove that the misrepresentation relates to an issue that the company regularly

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Election Reminders

2011 is a "municipal" election year in Pennsylvania. Officials elected to the positions that sometimes are called "county row offices" are up for election. They include Coroners, County Commissioners, District Attorneys, Prothonotaries, Records of Deeds, Registers of Wills, and other county officials. Some township supervisors, most of whom are elected for six-year terms, are up for election. In any counties with vacancies on the bench, Common Pleas Judges may be on the ballot.

Elections for offices where cross filing is permitted can be decided on Primary Election Day. The Pennsylvania Primary Election Day is Tuesday, May 17, 2011. Make sure that you are registered and get out to vote!

Relocation Rights of Parents

When parents are living in separate households due to divorce or separation, neither parent may relocate with a child of the parties without the written consent of the other parent. Pennsylvania law has long held that a child's relocation is a decision that parents must make together. Recently, the Pennsylvania General Assembly enacted sweeping changes that strengthen and clarify those limitations.

First, whether or not a custody order already exists, a relocating parent must have the written consent of the other parent before relocating. A parent who does not have the other parent's approval must file a detailed notice with the local county court of his or her intention to relocate at least 60 days before the planned relocation. The law provides for some flexibility in the notice period if the relocating parent could not reasonably have known of the need to relocate earlier. The notice must include the proposed new address, telephone number, school district, names of the persons who will be living in the new household, and the reasons for the relocation.

The objecting parent must file his or her detailed written objections within 30 days. Most courts have conciliation and mediation programs that all parents are required to attend in disputed custody cases. If such settlement programs do not result in an amicable agreement, the parents must move on to

a prompt custody hearing before a judge. Judges are not entitled to order parents to live in any particular place, but they do have the authority to decide where a child will live in a disputed custody case. A parent who chooses to relocate may always do so, but he or she may or may not be able to take a child along.

If the non-relocating parent simply ignores the notice, the parent who wishes to relocate must file an appropriate detailed affidavit with the court, indicating that the

notice was ignored, and must further petition the court for a clear order permitting relocation.

Even when a parent has primary custody of a child, he or she is not free to relocate without a written agreement or court order if the relocation would "significantly impair the right of a non-relocating party to exercise custodial rights." Since custodial rights include the right to participate in decisionmaking, any household move that triggers a school change is one which parents should treat as a legal relocation.

Insurance Update

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considers when deciding whether to issue a policy of insurance.

The law specifically prohibits insurance companies from canceling your insurance based on your age, your residence in a certain community, your race, sex, occupation, religion, or marital status. If a husband and wife are insured on the same policy, facts which justify canceling as to one spouse do not entitle the company to cancel the policy. Instead, the company may cancel coverage only as to one spouse.

Some protections against cancellation by the company do not apply if you are already in an insur-

ance high-risk pool, if you have more than four cars on your policy, or if you have certain kinds of commercial insurance for service stations or parking garages. Some extra protections exist if you have been insured for more than three years without problems or if the accident is your very first accident.

The insurance laws and administrative regulations are complex, and they provide procedures by which premium increases, cancellations, and refusals to renew can be challenged by insureds. Before considering any challenge, it is wise for insureds to secure as much information as possible from their insurance company in support of the company's decision.

Child Labor Law

Continued from page one.

Children under 18 may not work in any dangerous job or in a job which could be "injurious to health or morals." While many manufacturing jobs are banned for children under 18, including gunpowder and certain paint manufacture and use, the CLL is silent as to what might be considered dangerous in modern kitchens and retail stores. Some retail stores use machinery to disassemble and bundle cardboard boxes; many retail employers are left to presume that 16-year-old employees probably cannot work with such machinery.

Teens under 18 cannot be directly involved in handling or serving alcohol. If 16, a child may work in that part of a club, hotel, motel, or restaurant where alcohol is *not* served. Further, if 16, an employee may clear tables, serve food, and perform duties not involving the handling of alcohol in an establishment where revenue from the sale of food and nonalcoholic beverages is at least 40% of the gross food and beverage revenue.

The limitations on times and hours of work permitted for minors are detailed. Children under 18 may not work for more than eight hours a day, or for more than six consecutive days a week, or in excess of 44 hours in a week. If enrolled in school, children under 18 may only work 28 hours a week during the school year. Children under 16 may not work more than four hours on a school day or in excess of 18 hours in the school week.

The CLL includes specific, separate regulations for child actors and models, for young people

involved in volunteer ambulance, fire, and rescue corps, and for any children who do not reside in the Commonwealth. Additionally, the CLL includes limitations on late-night hours and on the length of permissible work hours between breaks. Some expansion of permissible work hours during the summer school vacation is permitted by the CLL. The CLL does not apply to children employed on farms or in domestic service in private homes.

Teenagers need certain state documents to work legally—the documents are often called "working papers." There are two categories of working papers—children under 16 must have an "employment certificate" and children over 16 must secure a "work permit." Work permits are more desirable because they are transferable between jobs; employment certificates are issued for specific jobs and are not transferable. Work certificates are issued to the employer and must be retained by the employer throughout the child's employment. Transferable work permits are retained by the child. As to both permits and certificates, employers are bound by significant additional reporting and record-keeping requirements under the CLL.

Employment certificates and work permits are issued by school district superintendents, supervising principals, or school board secretaries. Applications for certificates or permits must be made at the local high school by the child's parent, guardian, or legal custodian. The completed application must be signed by a physician or nurse practitioner who certifies that the child is physically fit for

employment. The child's age must be verified by a birth certificate, baptismal certificate, or passport. If none of these documents is available, the child's age may be verified by an affidavit signed either by a physician or by the child's parent, guardian, or legal custodian.

If an employer, parent, guardian, or custodian violates the CLL, he or she may be fined up to \$1,000 and/or imprisoned for up to 10 days. In addition, employers must know that where a child working in violation of the CLL is injured on the job, he or she is entitled to 150% of the workers' compensation benefits ordinarily allowed. The excess compensation is not payable by the insurance carrier but is instead solely the obligation of the employer. Even where an injured child has a valid certificate of employment, if he or she commenced employment and was injured before the certificate was actually issued, the 150% compensation must be paid.

If your child plans to work this summer, it is wise to start the process of securing the working papers and medical examination soon. If you are an employer who employs minors, it is important that you carefully review the restrictions of the CLL as to the particular child, job, work hours, and conditions of the employment relationship you are seeking to establish. Because the CLL focuses not only on the age of the child but on the work conditions and hours, a quick or cursory analysis is not wise. Never commence any employment relationship regulated by the CLL before you have the necessary work certificate or a copy of the child's permit.

Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Pennsylvania law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

Inflation Adjustments for 2011

Every year, most tax provisions are indexed for inflation. To assist you with your planning for 2011, we are providing some areas of interest for this year's adjustments. Please note, if there is something of interest, each IRS publication for the affected area has a "What's New" section near the front.

Deductions

Standard deductions involve the following:

\$5,800.00 for a person who is single;

\$11,800.00 for someone who is married, filing jointly or a surviving spouse;

\$5,800.00 for a married person filing separately; and

\$8,500.00 for the head of the household.

In addition people over the age of 65 have other deductions:

\$1,450.00 for someone who is single or the head of the household; and

\$1,150.00 if the person is married.

Finally, regardless of age, an individual can claim personal exemptions up to \$3,700.00.

Bracket Limits

The following figures are for taxable income, once the exemptions and deductions have been made. If your taxable income is above the highest amount shown, based on how you file your tax return, the excess is taxed at 35%.

10% Bracket

—Single person ("SP") with a taxable income of \$8,500.00.

—Married person who files jointly or is a surviving spouse ("M-J/SS") with a taxable income of \$17,000.00.

—Married person who files separately ("M-S") with a taxable income of \$8,500.00.

—Head of household ("HH") with a taxable income of \$12,150.00.

15% Bracket

—SP with a taxable income of \$34,500.00.

—M-J/SS with a taxable income of \$69,000.00.

—M-S with a taxable income of \$34,500.00.

—HH with a taxable income of \$46,250.00.

25% Bracket

—SP with a taxable income of \$83,600.00.

—M-J/SS with a taxable income of \$139,350.00.

—M-S with a taxable income of \$69,675.00.

—HH with a taxable income of \$119,400.00.

28% Bracket

—SP with a taxable income of \$174,400.00.

—M-J/SS with a taxable income of \$212,300.00.

—M-S with a taxable income of \$106,150.00.

—HH with a taxable income of \$193,350.00.

33% Bracket

—SP with a taxable income of \$379,150.

—M-J/SS with a taxable income of \$379,150.00.

—M-S with a taxable income of \$189,575.00.

—HH with a taxable income of \$379,150.00.

IRA Contributions

The limit for IRA contributions remains at \$5,000.00. For those age 50 or older at the end of 2011, the limit is \$6,000.00. This limitation is for a combination of the Roth IRA and traditional IRA contributions. That is, a person cannot make a \$5,000.00 contribution to the traditional IRA and another \$5,000.00 to the Roth IRA.

Roth IRA Income Limits

Eligibility to make contributions to your Roth IRA is phased out above certain adjusted gross income limits based on filing status. The following figures determine the amount a person can contribute to his/her Roth IRA, based upon his/her

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