

Frequently Asked Questions: Work Permits

Information to assist local educational agencies in the issuance of work permits.

California Work Permit Forms:

Permit to Employ and Work (CDE B1-4) | Statement of Intent to Employ and Request for Work Permit (CDE B1-1) | Statement of Intent for Self-Certification (CDE B1-8) | Request for Volunteer/Unpaid Trainee Authorization for California Minors (CDE B1-6)

Acronyms:

Permit to Employ and Work: work permit | California Education Code: *EC* | California Labor Code: *LC* | California Code of Federal Regulations: *CFR* | California Family Code: *FC* | Federal Fair Labor Standards Act: *FLSA* | California Division of Labor Standards Enforcement: *DLSE*

Questions

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Answers

1. Is a school always required to issue a work permit to an eligible minor?

No. It is solely within the discretion of the school district to determine whether a minor, who is still subject to the state's compulsory education laws, may obtain a "Permit to Employ and Work" form and, therefore, be employed to work.

Each of the laws governing the issuance of a "Permit to Employ and Work" uses the word "may," which is permissive, and, therefore, does not require the work permit to be granted (*EC* Section 75). If the statutes had used the word "shall," which means issuance is mandatory, then the school would not have discretion and would have to issue a "Permit to Employ and Work" to every eligible minor.

2. Does a high school graduate or a minor who has passed the California High School Proficiency Exam need a work permit?

No. Once a minor is no longer subject to the state's compulsory education laws, he/she is not considered a minor for purposes of the state's child labor laws and is not required to obtain a work permit (*LC* Section 1286(c)). California's compulsory school attendance law requires a person to attend school until he/she is eighteen years of age, or has graduated from high school, or has passed the High School Proficiency Examination.

However, under federal law (29 *CFR* Section 570.121), Certificates of Age are required for all employed minors under the age of 18. Since California does not issue Certificates of Age, the "Statement of Intent to Employ and Request for Work Permit" shall provide proof of age (*EC* Section 49114).

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3. May a minor have more than one work permit?

Yes. A minor may work concurrently for more than one employer and, therefore, have more than one valid "Permit to Employ and Work". But, regardless of the number of employers and work permits, the total number of hours worked may not exceed the total number of hours allowed by law.

4. May a minor who is not a California resident or not enrolled in the school district be issued a work permit?

Yes. The local school may issue a "Permit to Employ and Work" if the minor enters the attendance area from another state within ten days or less before the end of the school term. The minor may be issued a work permit to work full-time because he/she is exempted from school attendance for the remainder of the school term (*EC* Section 48321).

The requirement for a "Permit to Employ and Work" issuance is that the minor resides in the district that issues the work permit. The minor does not have to be a California resident, be enrolled in the school, or reside with parents (*EC* Section 49110).

Any minor wishing to work in California must adhere to the state's work standards and regulations, even if not a permanent or full-time resident of California (*LC* sections 1286 and 1299).

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5. May a truant or "dropout" be issued a work permit?

No. A truant or "dropout" is in violation of California's compulsory school attendance laws, and a school is not permitted to sanction violation of those laws by issuing a "Permit to Employ and Work". A truant or "dropout" is subject to arrest, and the parents are subject to infraction fines if the minor is found working without a work permit (*EC* sections 48264, 48293, and 49112).

6. May an expelled minor be issued a work permit?

Yes. The law does not prohibit issuing a "Permit to Employ and Work" to an expelled minor. An expelled minor must be provided educational services. Options of educational services include, but are not limited to, community day school, juvenile court school, or another school district, etc. When the expelled minor enrolls in and attends school, only the district in which the minor resides may issue—or refuse to issue—the "Permit to Employ and Work" (*EC* sections 48915, 48915.01, 48915.1, 48915.2, and 48926).

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7. Is a parent/employer required to obtain a work permit for his/her child who works for the family business?

Yes. A work permit is required for all minors employed regardless of relationship. A work permit is not required when the parent or guardian is disciplining or training their child in the family business and financial pay is not received (*EC* Section 49141).

Exemptions are allowed for agricultural or domestic work performed on land that is owned, operated, or controlled by the parents (*LC* Section 1394).

8. Does a parent/employer have to provide Workers' Compensation Insurance for his/her children/employees?

Yes. Workers' Compensation Insurance must be provided for all employees regardless of whether the employee/minor is the employer's child (*LC* sections 3700 and 3701).

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9. Does an emancipated minor need a work permit to be employed?

Yes. The only exception from child labor and compulsory school attendance laws have by an emancipated minor is that he/she may apply for a "Permit to Employ and Work" without the parent's permission. An emancipated minor may sign, in place of the parent, the "Statement of Intent to Employ Minor and Request for Work Permit" (*FC* Section 7050[e][16]). "Emancipated minor" is defined in *FC* Section 7002.

10. In the interest of expediency, may a school issue a blank "Permit to Employ and Work" to a minor and, when he/she secures employment, have the employer complete the necessary forms?

No. A school must never issue a blank "Permit to Employ and Work". The "Statement of Intent to Employ Minor and Request for Work Permit" must be returned completed to the school (*EC* sections 49162 and 49163). Then only the school has discretion to issue a work permit, and the school's lawfully authorized work permit issuer (*EC* Section 49110) shall complete all conditions as to its issuance.

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11. Must a public school or other governmental agency require a work permit for an employee/minor?

No. It is the position of *DLSE* that the state's California Labor Code does not apply to a state or local agency unless the agency is expressly included in the statute. The child labor statutes do not expressly include state or local agencies.

However, all governmental agencies are subject to *FLSA* and shall follow all child labor provisions, including having a Certificate of Age to verify permissible employment (29 *CFR* Section 212). California issues Certificates of Age using the "Statement of Intent to Employ and Request for Work Permit/Certificate of Age" (*CDE* Form B1-1) to provide proof of age (*EC* Section 49114).

12. How can it be determined whether a minor is an independent contractor or an employee?

To be classified as an "independent contractor," the person needs to be licensed or certificated in a particular expertise, have specialty skills, and the service is not offered through the employer. In a majority of cases, this excludes a minor from Independent Contracting employment.

A "Permit to Work and Employ" is only issued to minors who have an employer and they are accepting the responsibilities of the minor as their employee.

According to the *DLSE*, employers oftentimes improperly classify their employees as "independent contractors" so that they, the employer, do not have to pay payroll taxes, minimum wage, or overtime, or comply with other wage and hour law requirements such as providing meal periods and rest breaks, or reimburse their workers for business expenses incurred in performing their jobs. Additionally, employers do not have to cover independent contractors under workers' compensation insurance, and are not liable for payments under unemployment insurance, disability insurance, or social security.

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13. Who may issue a work permit?

EC Section 49110 specifies that only the following persons may issue Permits to Work and Employ:

- Superintendent of any local public school district in which any minor resides; or
- Superintendent of county schools if the minor resides in a portion of a county not under the jurisdiction of the superintendent of a school district; or
- Person holding a services credential with a specialization in pupil personnel services authorized, in writing, by the superintendent; or
- Work Experience Education teacher/coordinator authorized, in writing, by the superintendent; or
- Person authorized, in writing, by the superintendent if the designated person is not available, and delay in issuing a work permit would jeopardize the ability of the pupil to secure work; or
- Person authorized, in writing, to issue work permits if the superintendent is absent from the district and the district does not employ a person holding the necessary credential or a Work Experience Education teacher/coordinator.
- Principal of a public or private school may issue, or designate another administrator in the school to issue, work permits to pupils who attend the school by self-certifying a working knowledge of child labor laws.

The *DLSE* issues all entertainment industry work permits.

14. May a private school issue work permits to its students?

Yes. The principal of a public or private school may issue, or designate another administrator in the school to issue "Permit to Employ and Work" to pupils who attend the school. If the principal of a public or private school chooses not to issue work permits, work permits may be issued to pupils attending that school by the local school district (*EC* Section 49110.5).

A principal who issues a "Permit to Employ and Work" shall provide a "Statement of Intent for Self-Certification" form that he or she understands the requirements in existing law for issuing a work permit. Along with the Self-Certification form, the principal shall submit a copy of each Permit to Work and Employ he/she issues along with a copy of the "Statement of Intent to Employ Minor and Request for Work Permit" for each issued work permit to the superintendent of the school district in which the school is located (*EC* Section 49110.1).

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15. May a work permit be issued by the public school to a pupil who attends a private school located within the school district boundaries, even though the pupil is not a resident of the school district?

Yes. The California Department of Education has found that, pursuant to written authorization from the superintendent of the public school district, a "Permit to Employ and Work" may validly be issued for such a pupil. California's compulsory school attendance laws apply.

16. May the local school issue a work permit for a child who is under school age?

No. A "Permit to Employ and Work" may be issue to only minors between the ages of 12 and 18 years of age (*EC* 49111).

A child under school age is probably being employed in the entertainment industry. In such a case, permission to work must be issued by the State Labor Commissioner through the Department of Industrial Relations, Department of Labor Standards Enforcement (*EC* sections 48225, 48225.5, and 49111; *LC* sections 1308.5, 1308.6, and 1308.7).

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17. What process should be followed to issue a "Permit to Employ and Work"?

The minor/student, after obtaining a promise of employment, shall obtain the "Statement of Intent to Employ Minor and Request for Work Permit" form from the school.

The minor must complete the "minor" section, request that the employer and parent complete their sections (making certain to obtain both required signatures), and then return the completed form to the appropriate school authority.

The school's authorized Permit to Employ and Work issuer shall verify the minor/student's date of birth and the type of work permit to be issued. If all requirements are met, the authorized work permit issuer may issue the "Permit to Employ and Work."

The local school district or school has discretion to impose additional requirements for the issuance of a "Permit to Employ and Work". For instance, the school district may have a policy requiring the minor to maintain a 2.0 grade point average (GPA). In such a case, the Permit to Employ and Work issuer would need to verify the student's GPA. Another policy might require the minor to exhibit his/her social security card for verification by the school authority. Other local policies should be verified through the Permit to Employ and Work issuing authority.

18. Must the authorized Permit to Employ and Work issuer use only school records to verify the date of birth on the "Statement of Intent to Employ Minor and Request to Work Permit"?

No. The date of birth may be verified by using a birth certificate, baptism certificate, or a passport in lieu of school records. When there are no available official documents, an affidavit by the parent or legal guardian may be sufficient (*EC* Section 49133).

If school records are not used, a photocopy of the age verification document should be attached to the school's copy of the "Permit to Employ and Work" form.

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19. Does a student have to present his/her social security card to school authorities when applying for a work permit?

No. The "Statement of Intent to Employ Minor and Request to Work Permit" must contain, among other information, the name, address, telephone number, and social security number of the minor (*EC* sections 49115 and 49163). The statutes do not specify that the card itself must be presented, only that the number be on the application of a "Permit to Employ and Work" form.

The California Department of Education maintains that the "Statement of Intent to Employ and Request to Work Permit" signed by the parent or legal guardian ("I hereby certify that...the information herein is correct and true") holds the adult responsible for providing accurate information.

Schools may be more restrictive and require the minor to provide the social security card for purposes of verification before the "Permit to Employ and Work" is issued.

20. May a work permit be issue to a minor who is home schooled?

EC Section 49110 authorizes school officials to issue "Permit to Employ and Work" to eligible students. Students eligible for a work permit are subject to California's compulsory education laws. The principal of a private school may issue, or designate another administrator in the school, to issue work permits to pupils who attend the school by self-certifying a working knowledge of child labor laws and all laws pertaining to the issuance of work permits.

However, principals and designated administrators are not authorized to issue a "Permit to Employ and Work" to his or her own child (*EC* 49110).

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21. Does the school have any discretion to limit the minor's work activity?

Yes. As a condition of issuance, the local school/school district may reduce maximum work hours and impose additional occupational restrictions not specified in statute or regulation. The authorized Permit to Employ and Work issuer does not have discretion to extend hours beyond the maximum specified in statute or waive any occupational restrictions specified in statute or regulation.

22. When school is in session, when would a 16 or 17 year-old be permitted to work full-time (40 hours per week)?

Federal law defines a week that "school is in session" as a week in which school is scheduled for one day. An example might be the week during which Thanksgiving is celebrated. A school might be in session only on Monday and Tuesday. The minor could work up to eight hours per day on Tuesday (a day preceding a non-school day), Wednesday, Thursday, Friday, Saturday, and Sunday as long as the minor does not exceed 40 hours per week (*EC* sections 49112, 49116, 49130, 49131, 49132, and 49133; *LC* Section 1391).

No full-time "Permit to Employ and Work" shall be issued until the minor is accompanied by his or her parent or guardian before the person authorized to issue the work permit, and makes application therefore (*EC* sections 49130-49135).

Additionally, required forms for the issuance of a full-time "Permit to Employ and Work" shall include: (a) the school record of the minor giving age, grade, and attendance for the current term signed by the principal or teacher; (b) evidence of age, such as the school record of enrollment, or a certificate of birth, or a baptism certificate duly attested, or a passport, or affidavit of the parent, guardian, or custodian of the minor to prove to the officer that the minor is of the age required by law; (c) the written statement from a prospective employer that work is waiting for the minor and describing the nature of the work; and (d) a certificate signed by a physician appointed by the school board, or by other public medical officer, stating that the minor has been thoroughly examined by a physician and, in his/her opinion, is physically fit to pursue the work specified. No fee shall be charged the minor for the physical certificate (*EC* Section 49133).

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23. May a 16 or 17 year-old actually work 48 hours in a week while school is in session?

Yes. Minors who are employed in personnel attendance occupations or enrolled into a Work Experience Education, or cooperative vocational education program, are authorized to work up to 48 hours per week (*EC* Section 49116; *LC* Section 1391.1). Federal law defines a week that "school is in session" as a week in which school is scheduled for one day.

24. When may a 14 to 16 year-old be issued a full-time work permit?

A full-time "Permit to Employ and Work" may be issued to a minor 14 to 16 years of age when a diploma of graduation from the prescribed elementary is held, and one of the following circumstances exist: (1) the parent or guardian of the minor child presents a sworn statement that the parent or guardian of the minor is incapacitated for labor through illness or injury, or that through the death or desertion of the father or mother of the minor, the family is in need of the earnings of the minor and that sufficient aid cannot be secured in any other manner; (2) the minor is unable to reside with his or her family and the earnings of the minor are necessary for the support of the minor; and (3) The minor is residing with a foster care provider, or guardian receiving foster care funds for the minor, if the provider or guardian obtains written authorization from the minor's social worker, probation officer, or child protective services worker acting as an officer of the court. A work permit may be issued to a minor who is subject to this paragraph only if the child's case plan documents that the purpose of the employment is to further the goal of emancipation pursuant to Part 6 (commencing with Section 7000) of Division 11 of the *FC*, or to enable the minor to gain knowledge of necessary work skills and work habits, and of the responsibilities related to maintaining employment. The person issuing the work permit shall sign a statement that he or she, or a competent person designated by him or her, has investigated the conditions under which the application for the work permit has been made and has found that, in his or her judgment, the earnings of the minor are necessary for the family to support the minor or that the earnings of the minor are necessary to support the minor, and that sufficient aid cannot be secured in any other manner. Before issuing a work permit to a minor who is subject to circumstance (3), the person issuing the work permit shall sign a statement that he or she has received authorization from the minor's social worker, probation officer, or child protective services worker. A minor who applies for a work permit pursuant to this section shall be duly enrolled in a work experience education program (*EC* Section 49130).

A full-time "Permit to Employ and Work" issued to a minor 14 to 16 years-old shall expire no later than the end of the current school year (*EC* Section 49130).

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25. May a 14 or 15 year-old work during the school day?

No. While school is in session, an employer shall not employ a minor 14 or 15 years of age for more than three

hours in any day, nor more than 18 hours in any week, nor during school hours. However, students that are enrolled in and employed in a school-supervised and school-administered work experience and career exploration program may be employed for no more than 23 hours, any portion of which may be during school hours (EC 49116).

26. What is a "school day" and what does "school in session" mean?

A minimum school day in any high school or junior high school is defined as any day in which the minor is scheduled to attend school for 240 minutes. Anything less does not qualify as a school day, and work hours may be increased on such days even though the minor receives instruction on that day (EC sections 46141 and 46142; LC Section 1391).

Exemptions to the 240-minute standard are for students who attend evening high school, a regional occupational center, opportunity classes, a continuation high school, late afternoon or Saturday vocational training programs conducted under a federally approved plan for vocational education, and for students enrolled in an approved Work Experience Education program (EC Section 46141). In addition, students in grades eleven and twelve who attend a college or a university part-time are exempt from a full 240-minute minimum day.

Continuation high schools are required to have a 180-minute school day. Independent study programs are defined instructionally in the California *Education Code*, but there are no regulations concerning "seat time."

State law has no definition of "school in session" but the federal government defines the term as any week in which the public school for the county is in session for at least one day.

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27. How long do copies of "Permit to Employ and Work" have to be retained?

The school shall retain a copy of the "Statement of Intent to Employ Minor and Request for Work Permit" and the "Permit to Employ and Work" until the end of the fourth year after the work permit was issued. Those files may be retained on a computer disk(s) and, if requested, can be printed for examination (EC 41020; 5 CCR Section 16026).

The employer shall retain the minor's "Permit to Employ and Work" until the beginning of the fourth year after the work permit was issued (LC sections 1174 and 1299).

28. Does a minor working in a restaurant attached to a casino on an Indian reservation need a work permit?

There is no definitive answer to this question. Each situation must be dealt with on a case-by-case basis. Who has jurisdiction? The state or federal government? Is the casino run by the tribe or an outside entity? Who is the employer? Is the work area restricted to the restaurant, or do the minors serve meals in the casino? Is the restaurant distinctly separate from the casino (e.g., separated by a door), or is it part of the gaming area?

Contact your regional office of the *DLSE* with questions about specific situations.

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29. May an entry-level employee be paid less than the minimum wage?

Yes. The Industrial Welfare Commission Orders of 2001 state that "employees during their first one-hundred sixty (160) hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than 85 percent of the minimum wage rounded to the nearest nickel."

30. When is a student considered an unpaid trainee or a volunteer, not an employee?

The *FLSA* applies to any person involved in an employer-employee relationship. The *FLSA* is administered by the U.S. Department of Labor, Wage and Hour Division, with respect to private employment, state and local government employment, and other agency employment. (29 *CFR* Section 204).

The mere knowledge by an employer of work done for him/her by another is sufficient to create the employment relationship under the *FLSA*. The U.S. Department of Labor has always considered work performed as part of an evaluation or training program to be compensatable.

Determining if a minor is an employee under the *FLSA* will depend on all of the circumstances surrounding the activities on the premises of the employer. A minor is not required to be paid if he/she is a trainee, a volunteer, or donates labor to a school (e.g., in-school placement). In the event that the minor is not an employee and is classified as an unpaid trainee or volunteer for educational or academic purposes, a "Permit to Employ and Work" is **NOT** required. However, a "Request for Volunteer/Unpaid Trainee Authorization for California Minors" (CDE Form B1-6) shall be completed to inform the parent or guardian, and the local education agency of the minor's placement.

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Trainee

The trainee/student is NOT an employee within the meaning of the *FLSA* if all six of the following criteria apply to the situation:

1. The training, even though it includes actual operation of the employer's facilities, is similar to that which would be

given in a vocational school (i.e., a curriculum is followed and the student is under continued and direct supervision either by representatives of the school or by employees of the business).

2. The training is intended to benefit the trainee/student rather than to meet the labor needs of the business.
3. The trainee/student does not displace a regular employee, does not fill a vacant position, does not relieve an employee of assigned duties, and does not perform services that, although not ordinarily performed by employees, clearly are of benefit to the business.
4. The employer that provides the training derives no immediate advantage from the activities of the trainee/student and, on occasion, the employer's operations may actually be impeded.
5. The trainee/student is not necessarily entitled to a job at the conclusion of the training period.
6. The employer and the trainee/student understand that the trainee/student is not entitled to wages for the time spent in training.

If you answer YES to all six criteria, the individual student is NOT an employee within the meaning of the *FLSA*. Wages are not required.

If you answered NO to any of the six criteria, either the business or the school system must compensate the student worker; both parties are jointly responsible for compliance with labor laws.

Examples of unpaid training include the following situations:

- In a hospital: The student job-shadows a nurse by following and observing the nurse.
- In a supermarket: The student does simulated work with other students and/or the teacher: rings-up baskets of groceries, makes change, learns assorted transactions and returns groceries to the shelves.
- In an office: The student enters worthless data on a company computer that is not used to conduct business.

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Volunteer

Commercial businesses may never legally utilize unpaid volunteers.

An individual may serve as unpaid volunteer for public service or for religious or humanitarian objectives. Typically authorized volunteer sites include established volunteer programs operated by charitable nonprofit organizations, governmental agencies, hospitals, and nursing homes. A student may be provided opportunities to participate in meaningful educational activities or programs. For example, a student may choose to assist with school fund-raisers, deliver meals to the homebound, visit patients in nursing homes, or solicit contributions.

A student may be considered to be a "volunteer" within the meaning of the *FLSA* if the intent is clearly to donate his/her services for the public good.

A person employed by a religious, charitable, governmental, or nonprofit organization is not allowed to "volunteer" the same type of services (any activity directly related to the job) during the weeks employed.

Examples of volunteers:

- The student chooses to participate voluntarily at the city's established zoo volunteer program.
- The student volunteers as a "Candy Striper" to donate some spare time in helping patients in a hospital.

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In-School Placement

As part of the overall educational program, schools may permit or require a student to engage in various school-related work programs in the school district for periods of no more than an hour per day (or an equivalent amount of overall time).

Examples of in-school placement are as follows:

- The student helps in the school lunchroom for periods of 30 minutes to one hour per day.
- The student performs minor clerical work in the school office or library.

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31. Can a work permit be issued to a minor for "sign waving" or curb-side advertisement?

Sign waving is unauthorized for 14 and 15 year olds only (29 *CFR* Section 570.33). Even though sign waving is not restricted by statutes for 16 and 17 year olds, numerous regulations emphasize that no minor shall be employed in any occupations dangerous to the life or limb, or injurious to the health or morals of the minor (*LC* Section 1294; 29 *CFR* Section 570.71).

32. Can a work permit be issued to a minor who is employed in a private home?

This depends on the type of home employment. The *DLSE* shall issue an Industrial Home-Workers Permit for the reasons of manufacturing goods in the home (*LC* sections 2650 and 2660). All industrial Home-Worker employment sites shall be free of infectious, contagious, or communicable disease, and shall be clean, sanitary, and free from infectious, contagious, or communicable disease (*LC* Section 2661).

Minors employed with In-Home Support Services (IHSS) through the Department of Social Services are employees of a governmental agency and therefore, are not required to obtain a "Permit to Employ and Work". However, federal law requires that all minors possess a Certificate of Age, which is fulfilled with the completion of the "Statement of Intent to Employ and Request for Work Permit" (*EC* 49114; 29 *CFR* Section 212).

33. When do minors who are employed by a parent or guardian require a work permit?

The only exclusions to a "Permit to Employ and Work" for parent/guardian employment is when the minor is employed in agriculture, horticulture, viticulture, or domestic labor on or in connection with the property the parent or guardian owns, operates, or controls (*LC* Section 1394). All other occupational employments are subject to the requirement of a "Permit to Employ and Work".

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