

# ARIZONA

## EMPLOYMENT LAW LETTER

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### **Children under 16 not forbidden from walking in kitchen in AZ**

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*The Department of Labor (DOL) and Industrial Commission of Arizona (ICA) are charged with the enforcement and administration of youth employment laws. Youth laws place restrictions on the types of jobs minors can perform and the times or hours some minors can work. The ICA often interprets Arizona law in a way to be more restrictive about hazardous positions than the DOL, even though the child labor statutes were modeled after their federal counterparts. It's a rare for the Arizona Court of Appeals to issue an opinion on youth employment laws, but it did just that to reject the ICA's strict interpretation of the prohibition of hiring minors under 16 to "work in, about, or in connection with [both] cooking and baking." This decision could have a broader reach in other industries because the ICA strict interpretation was far reaching.*

#### ***Anonymous tip***

In 2018, an anonymous tipster reported to the ICA that a family-owned Latin American restaurant hired children "under the age of 16" for jobs requiring them to be in or around the kitchen. The ICA notified the restaurant it had been made aware of a possible violation of state youth employment laws and initiated an investigation.

The investigation revealed the restaurant had three employees under 16 years old who worked as hosts and who were responsible for greeting and seating guests. The hosts had no hand in cooking, baking, or food preparation. They did assist with bussing duties, which required them to transport dirty dishes to the kitchen.

#### ***Child labor violations***

Based on this information, the ICA charged the restaurant with state child labor violations for "cooking and baking." The ICA imposed the maximum civil penalty. The restaurant requested a hearing before an administrative law judge (ALJ).

During the hearing, the ICA explained its interpretation of "in, about, or in connection with" work. According to the ICA, "it means [that minors] may not . . . perform the duties that are related to prohibited occupations or equipment, but if [the minors] are in the area and around the equipment or the occupation, that still qualifies as a violation." The quote is here to demonstrate how expansive the ICA's application of the language in the statute was.

The ALJ rejected this interpretation, holding the statute didn't regulate "casual encounters" between the minors and the kitchen and vacating the civil penalty.

#### ***Special action sought***

The ICA petitioned the Arizona Court of Appeals for special action review, which is a review under limited circumstances. The appeals court granted review and affirmed the ALJ's ruling. In doing so, it looked to the plain language of the statute to determine that it prohibits children under 16 from "cooking and baking." It noted that nowhere in the statute does it prohibit children under 16 from walking in the kitchen.

The court acknowledged that Arizona modeled its child labor laws on their federal counterpart, which permits minors to do "kitchen work," including "food preparation and cleaning of kitchen equipment." The court's ruling

brings the Arizona child labor law more closely aligned with its federal counterpart (at least in this area) and makes it easier for employers to navigate the often-conflicting statutes.

### ***Takeaways***

Employers that anticipate employing minors should familiarize yourselves with the federal and applicable state youth employment laws before hiring workers under 18, paying particularly close attention when hiring children under 16 years old. This could be the first step in bridging the gap between Arizona's and the federal restrictions with respect to hazardous positions.

When in doubt, you should consult with experienced counsel about any questions. Keep in mind that due to the comprehensive nature and the differences between Arizona and federal law, certain industries and companies may struggle with understanding and complying with both sets of youth employment laws.

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