



November 1, 2018

Melissa Smith
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor

**AIHA Comments on Expanding Employment, Training, and
Apprenticeship Opportunities for 16- and 17-Year-Olds in Health
Care Occupations Under the Fair Labor Standards Act**

Docket Number: 2018-20996 / RIN: 1235-AA22

Dear Ms. Smith:

The American Industrial Hygiene Association® (AIHA) appreciates the opportunity to comment upon the proposed rule that would allow 16- and 17-year-olds to independently operate power-driven patient lifts. As you review our comments and contemplate how we might be of service, please keep in mind that AIHA and our members have a reach that extends to millions of people, with solid credibility that is built from 79 years of service to the occupational and environmental health and safety community. Specifically, AIHA has 8,500 members who represent a cross-section from industry, consultancies, labor, government, and academia. We maintain 68 active U.S. local sections, more than 50 volunteer groups, and have partnership agreements with governmental and nongovernmental organizations representing the full spectrum of worker health and safety vocations. Finally, we have several award-winning publications, a strong social media presence, and host conferences where thought leaders from a variety of industries gather to share new information and answer practical questions on specialized health and safety topics.

Recommendations

Protect America's young workers by:

- 1) Issuing a new rule that would prohibit 16- and 17-year-olds from manually lifting patients who cannot bear weight.
- 2) Maintaining the current conditions under which 16- and 17-year-olds can operate power-driven patient lifts under Hazardous Occupations Order 7.
- 3) Asking NIOSH to revisit the work it conducted from 2010 to 2011, and conduct a new assessment to determine the circumstances, if any, that 16- and 17-year-olds can safely operate power-driven patient lifts, either independently or as part of a team with another employee who is at least 18 years of age.

Through this rulemaking, the U.S. Department of Labor proposes to remove the prohibition regarding the independent operation of power-driven patient lifts by 16- and 17-year-olds from the Department's Hazardous Occupations Orders (HO) 7. AIHA is concerned that the Department provides no scientific evidence for this proposed rule. We urge the Department to reconsider its actions and instead align itself with the recommendations of the National Institute for Occupational Safety and Health (NIOSH) – the only Federal entity specifically charged with researching and providing recommendations on worker health and safety.

NIOSH recommends that 16- and 17-year-olds only operate power-driven patient lifts as part of a team assisting another caregiver who is at least 18 years of age, and further recommends that 16- and 17-year-olds be prohibited from manually lifting patients¹. AIHA strongly agrees with these recommendations.

AIHA observes that the Department bases its proposed rule upon two key arguments: 1) The operation of power-driven patient lifts is safer for both workers and patients than manual lifting; and 2) The health care industry is experiencing an employment shortage, and by removing the operation of patient-driven power lifts from HO 7, youth employment and apprenticeship learning opportunities will be increased.

Addressing the first point, AIHA fully agrees with the Department that the use of power-driven patient lifts is considerably safer than manual lifting for both workers and patients, as the use of such equipment has the potential to reduce worker injuries by up to 95 percent². However, the Department errs in its reasoning that because it "believes that it is incongruous for 16- and 17-year-olds to be prohibited from independently operating power-driven patient lifts but permitted to manually lift patients without any restrictions (since manual lifting of patients is not prohibited by

¹ Letter by NIOSH Director John Howard to WHD Deputy Administrator Nancy Leppink, Mar. 11, 2011, https://www.dol.gov/whd/CL/NIOSH_CoverLetter.pdf.

² U.S. Department of Labor, Occupational Safety and Health Administration, Safe Patient Handling: Preventing Musculoskeletal Disorders in Nursing Homes, <https://www.osha.gov/Publications/OSHA3708.pdf>.

any HO)", that 16- and 17-year-olds should be permitted to independently operate these devices, as the use of such devices are safer.

The Department correctly notes that the manual lifting of patients by youth is not prohibited by HO 7; however, such activity is specifically discouraged by the government, as clearly demonstrated in a 2011 letter to the Department from John Howard, M.D., the Director of NIOSH, in response to a request for assistance from the Department in determining under what circumstances 16- and 17-year-old employees can safely operate or assist in the operation of power-driven patient lifts:

"Although this NIOSH assessment has determined that many 16- and 17-year old employees cannot safely operate power-driven patient lifts to lift and transfer patients by themselves, Federal child labor laws should also not permit working youth to manually lift residents. Manual patient handling has been shown to have a greater risk for low back disorders than the use of power-driven hoists for patient lifts. **Consequently, NIOSH encourages the Wage and Hour Division to consider regulations prohibiting youth less than 18 years of age from manually lifting residents who cannot bear weight or assist when being transferred.**"³ (emphasis added)

In view of this assessment, AIHA fully agrees with NIOSH's recommendation and strongly urges the Department to issue a regulation prohibiting 16- and 17-year-olds from manually lifting patients.

Addressing the second argument, that the Department believes the proposed rule will increase employment opportunities for 16- and 17-year-olds, the Department does not reference any studies that have found that the current provisions of HO 7 act as a barrier to youth employment. Similarly, the Department does not reference any studies indicating that the present conditions under which youth may operate power-driven patient lifts are barriers to apprenticeship programs in the health care industry.

The Department estimates that if its proposed changes to HO 7 are enacted, up to 23,249 new workers could be added to the health care industry. AIHA questions this estimate and its underlying assumptions. Again, the Department has not provided any evidence of studies which indicate that the provisions of HO 7 act as a barrier to youth employment. Anecdote alone is insufficient; reports of challenges arising from confusion in the immediate aftermath of the 2010-2011 regulatory changes to HO 7 should not be conflated with the actual effects, if any, of the new conditions for the use of lifts which were put in place. AIHA further believes that the need to fill open positions should not lead to placing workers at greater risk by weakening the protections currently in place. Indeed, by the Department's own observations concerning manual lifting, grounds exist to strengthen worker protections.

The Department cites a 2012 fact sheet by the Massachusetts Department of Health *Teens at Work Program*, which indicated that health care employer, teen employee, and student difficulties

³ Letter by NIOSH Director John Howard to WHD Deputy Administrator Nancy Leppink, Mar. 11, 2011, https://www.dol.gov/whd/CL/NIOSH_CoverLetter.pdf.

arose from the 2010-2011 changes to HO 7. The U.S. Department of Labor uses the *Teens at Work* fact sheet as evidence of what it views as the overly burdensome impacts of HO 7; however, a closer examination of the fact sheet reveals that the difficulties arose from confusion about regulatory changes and inaccurate perceptions – not the changes themselves. Indeed, the fact sheet noted that the survey which indicated difficulties also revealed that only about half of respondents had seen the U.S. Department of Labor Wage and House Division’s 2011 Field Assistance Bulletin. It is this lack of information that prompted Massachusetts to issue the *Teens at Work* fact sheet and create short packets for vocational schools, employers, and staff that further clarified the conditions that must be met for 16- and 17-year-olds to use power-driven patient lifts.

The Department also cites a 2011 letter⁴ from the American Health Care Association and the National Center for Assisted Living as further evidence of the negative impacts of HO 7, as the letter indicates that community colleges and apprenticeship programs had stopped accepting 16- and 17-year-olds into their programs. However, the letter is actually a request for clarification and states that the American Health Care Association and the National Center for Assisted Living “fully support” the new conditions under which 16- and 17-year-olds can operate power-driven patient lifts. Similarly, in another letter⁵ cited by the Department, the members of LeadingAge, who serve two million people every day, “applaud... [and] support NIOSH’s recommendation to the U.S. Department of Labor (DOL) that such workers [16- and 17-year-olds] be allowed to operate power-driven mechanical lifting devices with the assistance of an experienced caregiver at least 18 years of age”. Thus, while these letters convey some concern, they also express strong support for the conditions which were put in place, and simply seek clarification from the Department to speed effective implementation.

The Department further points to letters received from Members of Congress, who ask the Secretary of Labor to reevaluate the provisions of HO 7 relating to the operation of power-driven patient lifts by 16- and 17-year-olds. While letters from Members of Congress certainly call for a response from the Department, the letters the Department cites contain no references to studies demonstrating that the hazards to youth of operating these devices have been reduced. In addition, while the letters speak of the need to fill worker shortage gaps in the health care industry, they do not specifically state that the provisions of HO 7 act as a barrier to meeting employment needs. In the absence of any such evidence, the Department would be more responsive to these Members of Congress by asking NIOSH to revisit the work it conducted from 2010 to 2011, and conduct a new assessment to determine the circumstances, if any, that 16- and 17-year-olds can safely operate power-driven patient lifts, either independently or as part of a team with another employee who is at least 18 years of age. AIHA would support the Department in requesting such assistance from NIOSH.

⁴ American Health Care Association, “Statement of AHCA/NCAL Regarding NIOSH Recommendations on Use of Mechanical Patient Lifts by 16- and 17-year old LTC Employees”, Mar. 2011.

⁵ LeadingAge, “Statement of LeadingAge Regarding NIOSH Recommendations for Operation of Power-driven Patient Lifts by 16- and 17-year-old Nursing Home Employees”, Mar. 23, 2011.

Conclusion and Next Steps

Protecting workers and patients is the first priority, standing before all others. It is possible that the technologies of power-driven patient lifts and health care industry work environments have improved since the 2010-2011 changes to HO 7, such that the hazards to 16- and 17-year-olds have been reduced. However, the Department has provided no evidence that this is the case, and absent a new study by NIOSH, it would be irresponsible to place young workers at greater risk in an industry with one of the highest rates of injuries based upon a handful of letters and tangential anecdotes. For these reasons, AIHA strongly urges the Department to protect America's young health care workers by taking the following steps:

- 1) Issuing a new rule that would prohibit 16- and 17-year-olds from manually lifting patients who cannot bear weight.
- 2) Maintaining the current conditions under which 16- and 17-year-olds can operate power-driven patient lifts under Hazardous Occupations Order 7.
- 3) Asking NIOSH to revisit the work it conducted from 2010 to 2011, and conduct a new assessment to determine the circumstances, if any, that 16- and 17-year-olds can safely operate power-driven patient lifts, either independently or as part of a team with another employee who is at least 18 years of age. This assessment should consider the safety of both the caregivers (16- and 17-year-olds) and the care recipients, thereby assuring there is a mutual process for the protection for both parties.

AIHA thanks you for the opportunity to comment upon the proposed rule on expanding employment, training, and apprenticeship opportunities for 16- and 17-year-olds in health care occupations under the Fair Labor Standards Act. AIHA is committed to the protection of all workers, and is thus aligned with the core goals of the U.S. Department of Labor. We look forward to working with you to help achieve our common goals and overcome challenging obstacles. For additional information, please feel free to contact Mark Ames at mames@aiha.org or (703) 846-0730.

Respectfully,



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President
AIHA