

Mechanical Patient Lift Prohibition

Issue: The U.S. Department of Labor (DoL) issued a regulation effective July 19, 2010 which revises the Child Labor provisions in the Fair Labor Standards Act by prohibiting 16- and 17-year old employees “from operating, tending, . . . working from, repairing, servicing, or disassembling a crane, derrick, elevator, hoist or high-lift truck.” According to representatives of the DoL Wage and Hour Division, mechanical lifts used for lifting and transferring the elderly in nursing homes and assisted living facilities fall within that prohibition.

WAHSA Position: Oppose. Support for a compromise which would permit 16- and 17-year old caregivers to operate or assist in the operation of a power-driven mechanical patient lift with the assistance of an experienced caregiver at least 18 years of age.

Arguments in Support of WAHSA Position:

- According to the Wisconsin Department of Workforce Development (DWD), the DoL regulation conflicts with the Wisconsin *Safe Lift* Initiative to incorporate mechanical lifting devices in all health care settings in an effort to reduce the number of employee back injuries. In a September 16, 2010 letter to Art Kerschner, Jr., Chief of the Child Labor and Special Enforcement Branch of the DoL Wage and Hour Division, former DWD Secretary Roberta Gassman wrote that “using the lifts is actually safer for the employee so prohibiting an age group seems contradictory.”
- The safety issue also was raised in a December 10, 2010 letter to Nancy Leppink, Deputy Administrator of the DoL Wage and Hour Division, from U.S. Senators Herb Kohl (D-WI), Amy Klobuchar (D-MN), Mike Johanns (R-NE) and Kent Conrad (D-ND), encouraging the Department to reconsider its position. “A review of the medical literature highlights the well-established fact that manually lifting patients increases the risk of injury to patients – however, the patient lifts used in hospitals and nursing homes to transfer bedridden people are extremely safe,” the Senators wrote. “Such lifts make moving and assisting bedridden individuals much safer for both workers and for patients by reducing the risks associated with manual lifting.” (Emphasis included).
- The May 20, 2010 *Federal Register* which contained the publication of the DoL regulation stated that the impetus for making the changes to the Child Labor rules was recommendations for changes to hazardous occupations issued by the National Institute for Occupational Safety and Health (NIOSH). But in reviewing the NIOSH report, former DWD Secretary Gassman noted “we can find no reference to patient lifts as being hazardous to 16- and 17-year olds.”
- Many long-term care providers have stopped hiring 16- and 17-year olds in response to this regulation, which has been particularly problematic for rural providers who in the past have depended upon younger workers.



- The Wisconsin Youth Apprenticeship program was authorized by the Wisconsin Legislature in 1991 to provide high school juniors and seniors with the opportunity to explore their chosen career while still in high school through occupational-related instruction and paid on-the-job training. But according to Cathy Crary, the DWD Supervisor of the Youth Apprenticeship Program, the DoL regulation is already having a huge negative impact on Wisconsin's Youth Apprenticeship (YA) Program. Crary writes: "We have been overwhelmed with calls from frustrated YA Coordinators, parents, and teachers who feel this rule change was unnecessary, too broad in its application and very suspect in the 'interpretation' that the Hoist and Hoisting Apparatus applies to patient lifts. They are in disbelief that a change like this can occur in a nation where training our future workforce is touted as a high priority."
- The NIOSH recently completed a study for the DoL to determine "under what circumstances or conditions, if any, 16- and 17-year old employees can safely operate or assist in the operation of power-driven patient lifts." Among the NIOSH conclusions was the following: "Based on the review of the relevant scientific literature and biomechanical analyses, NIOSH has determined that many 16- and 17-year old employees cannot safely operate power-driven patient lifts to lift and transfer patients *by themselves*, although they may be able to safely work as a part of a team to assist another experienced caregiver who is 18 years of age or older to transfer or move a patient/resident." (Emphasis included).
- **WAHSA and its national affiliate, LeadingAge, support NIOSH's recommendation to the DoL that 16- and 17-year old employees be allowed to operate or assist in the operation of a power-driven mechanical patient lift with the assistance of an experienced caregiver at least 18 years of age and we respectfully request the DoL to adopt that recommendation immediately.**

The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership organization of not-for-profit corporations principally serving seniors and persons with a disability. Membership is comprised of 188 religious, fraternal, private, and governmental organizations which own, operate and/or sponsor 195 nursing homes, 14 facilities for the developmentally disabled, 87 residential care apartment complexes (RCAC), 95 community-based residential facilities (CBRF), 114 senior apartment complexes, and more than 300 community service agencies which provide programs such as Alzheimer's support, adult day care, child day care, home health, hospice, home care, and Meals on Wheels. Together, WAHSA serves 505 not-for-profit nursing home, assisted living, senior housing, and other community-based providers principally serving elderly persons and individuals with a disability. WAHSA members employ over 38,000 people who provide compassionate care and service to over 48,000 individuals each day.

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