

# The Trump Administration Moves to Roll Back Child Labor Rules and Expose Teen Workers to Hazardous Jobs

## We Must Oppose This Action That Will Endanger Teen Workers and Patients

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On September 27, the Trump administration, in their zeal to deregulate, [proposed to repeal](#) a [Department of Labor policy](#) that protects young workers (16 and 17) from getting injured in nursing homes and other health care occupations.

With no new data or risk analysis, the administration is proposing to roll back child labor protections for hazardous jobs. The nursing home industry has the [highest injury](#) rates of injuries and illnesses of any industry in the United States—and this new policy will endanger the most vulnerable workers as well as patients.

The Trump administration is proposing to allow young workers to operate dangerous patient lifts by themselves, with no training or assistance from an adult worker. These lifts are used to lift and transfer patients who cannot lift themselves (out of a bed, chair, or floor). Current [DOL enforcement policy](#) prohibits young workers (age 16 and 17) to operate [powered patient lifting devices](#) **unless they are trained and use such devices with a worker 18 or older**. The Trump Administration is now rolling back this sensible policy.

Because these lifting devices are complicated pieces of machinery, most require at least two workers to use. The current common sense policy of requiring a young worker to be paired with an adult 18 or over was put into place in 2011 and was based on a thorough data analysis conducted by the governments' workplace safety experts at the [National Institute for Occupational Safety and Health](#) (NIOSH). NIOSH concluded that 16- and 17- year olds cannot safely operate power driven hoists to lift and transfer patients by themselves. Further, NIOSH found that most 16- and 17-year-old workers do not have the ability to properly assess the risks associated with using power driven lifts.

Now, with no new analysis or recommendations from NIOSH or any other new information, the DOL, under the guise of expanding employment opportunities for young workers, is proposing to repeal this common sense policy and give a green light to the

industry to injure young workers. Allowing 16- and 17-year-old nursing assistants to operate mechanical lifts without adult assistance would lead to more painful and potentially debilitating injuries to young nursing home workers, who lack sufficient experience and training to handle the challenging task of transferring residents with complex physical and mental disabilities. The proposal also shows reckless disregard for elderly residents and residents with disabilities, who would be at increased risk of falls and other trauma causing pain, increased disablement, medical complications, hospitalization, and death that occur frequently in nursing homes. Further, there is no data or published evidence that this will lead to any increase in employment opportunities for young workers.

If the Department of Labor was truly concerned about increasing safe job opportunities for young workers, it would codify the current enforcement policy. But, this administration's true concern is deregulation and scoring points with big industry, leaving workers—including the most vulnerable workers, our kids—with less protection.

### **For the safety of our kids and patients, we must oppose this new proposal.**

The deadline for comments is **November 26, 2018**. The Labor Department must hear from us: Click [here](#) to file comments. Urge the DOL to abandon this new proposal because it will endanger young workers and patients. Urge the department to instead codify the current enforcement policy that allows trained 16- and 17-year-olds to use patient lifts when they are assisting a worker 18 or over.

This is the administration's first announced roll back of protections for child labor in hazardous jobs—and we expect more to come.

### **Background on the Department of Labor's Protections for Young Workers—Now At Risk of Being Repealed**

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The Department of Labor administers the Fair Labor Standards Act (FLSA), including the child labor provisions of the FLSA. To protect children from hazardous employment, the FLSA provides for a minimum age of 18 years for occupations found and declared by the Secretary of Labor to be particularly hazardous or detrimental to the health or well-being of children 16 and 17 years of age. There [are 17 non-agricultural hazardous orders](#) that restrict employment of children under 18. Hazardous order number seven restricts young workers, 16 and 17 years old, from using power driven patient lifts.

All current hazardous orders are based on the science and data relating to hazardous jobs, worker injuries, and young workers. Further, for the past few decades, every administration (Republican and Democrat), except the current administration, has relied on the expertise of the government's health and safety research agency (NIOSH) to provide a comprehensive review of all worker injury data and to make recommendations, prior to any proposed changes to existing hazardous orders. This administration is the first to ignore the data and not conduct a risk assessment prior to proposing a change.

In 2011, the Department of Labor received a request from some nursing homes to revisit hazardous order number seven and the prohibition on young workers operating patient

hoisting devices on their own. In response to these requests, the Labor Department asked NIOSH to study the particular risks for 16- and 17-year-olds operating and assisting in the operation of patient lifts.

NIOSH completed its study and concluded that 16- and 17-year-old employees cannot safely operate power-driven patient lifts to lift and transfer patients by themselves. NIOSH found that independent use of power-driven hoists by 16- and 17-year-olds would put them at increased risk for serious musculoskeletal injuries. In particular, the [NIOSH review](#) found that “many 16- and 17-year-old workers do not have the physical strength required to” operate the lifts, and would be at an “increased” risk of injury. Further, the NIOSH review found that “working youth greatly underestimate the dangers associated with tasks known to be hazardous” and that “specific training alone is not sufficient to protect young workers from patient lifting-related injuries.”

NIOSH concluded, however, that 16- or 17-year-old workers may be able to safely work as part of a team to assist another experienced caregiver who is 18 years of age or older to transfer or move a patient/resident. NIOSH stated that “two caregivers (one of whom should be an experienced caregiver at least 18 years of age) are recommended when using a power-driven patient lift to lift or transfer non weight bearing residents.”

This recommendation formed the basis for the Labor Department’s current common sense [enforcement policy, implemented in 2011](#), which allows 16- and 17-year-old workers to operate patient lifts—but only if they have completed 75 hours of nurse’s aide training, and “only if they are assisting in the use of lifting devices as a junior member of at least a two person team that is headed by an employee who is at least 18 years of age. All members of the team must be trained in the safe operation of the lifting devices being used”. This is a common sense policy that allows young workers to be trained and gain experience with this dangerous equipment, without exposing them to increased risk of injury.

The Trump Administration is now **ignoring** the government’s own scientists’ conclusions and, with no new data or evidence, repealing this policy and proposing to change hazardous order number seven so that there are *no* restrictions on children using these lifts. They will not have to be trained and they will not have to work with an older worker when lifting a patient.

Without providing any countervailing evidence to refute the expert recommendations of NIOSH, the administration is now proposing to rescind this common sense enforcement policy, under the guise of its commitment to expanding apprenticeships for young workers. Unfortunately, the logic fails on its face. The risk of harm to these young workers is too great to abandon the mere and simple requirement that they have adult assistance when operating machinery that could put them at risk for life-altering injuries.

## **This Proposal Endangers Patients and Residents**

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This proposed regulation is also dangerous for residents and patients. On Friday, September 24, 2018, a group of resident advocates met with officials from the Office of Management and Budget to oppose this rule. In particular, they

delivered a statement from nursing home advocates that stated: “Revoking the 2011 DOL Field Memo that prohibits 16- and 17-year-old nursing home assistants from operating patient lifts by themselves would recklessly ignore research and experience and turn over one of the most complicated and hazardous jobs in nursing homes to the least experienced workers. The most vulnerable and dependent patients in the health care system would be at increased risk of injuries that can cause pain, broken bones, medical complications, increased disablement, hospitalization and frequently, death.” Signed by: Janet Wells, California Advocates for Nursing Home Reform; Toby Edelman, Center for Medicare Advocacy; Richard Mollot, Long Term Care Community Coalition; Lori Smetanka, National Consumer Voice for Quality Long –Term Care; Penelope Ann Shaw, Nursing Home Resident.

## **The Labor Department Is Falsely Claiming That Repealing the Current Policy Will Be Safer for Workers**

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In proposing to repeal the current common sense enforcement policy that allows 16- and 17-year-old workers to use patient lifts with an older worker, the Labor Department is making the false claim that it will be safer for young workers. However, the proposal does not contain any published studies or reviewable data that the current enforcement policy is dangerous for workers. In fact, there is little mention of the current policy in the Labor Department’s proposed rule. But the current enforcement policy prevents injuries by allowing young workers to use patient lifts when they are paired with a worker 18 or over. And according to the government’s publications, almost all [patient lifts require two or more workers to use them](#). Youth workers can use them under DOL policy when one of the workers is an adult 18 or over.

Further, the current enforcement policy is based on a comprehensive review of the literature and dangers to young workers. In contrast, the Labor Department has not conducted a new review of the same nature. Again, if the department was truly concerned about increasing safe job opportunities for young workers, it would codify the current enforcement policy, rather than proposing one that would put highly vulnerable youth workers in greater danger.

## **The Labor Department’s False Claims About Increasing Job Opportunities**

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To put it bluntly, this proposal *will not* increase job opportunities for youth workers. There are dozens and dozens of tasks that young workers can and already perform in nursing homes independently. Further, a teen worker can use a patient lift when they are paired with a worker 18 or over. That has been the policy for the past seven years—and it has worked well.

The Department of Labor has provided no new evidence, published studies, or data that suggest that their proposed roll back will increase opportunities for young workers. They rely on a tiny, unpublished and draft 2012 survey (that the Labor Department did not even put in the record) of a handful of vocational programs in Massachusetts, fully 50% of which were unaware of the department’s 2011 common sense policy that young

workers can use patient lifts if they are working with a worker 18 or older. (NELP obtained the survey from MA through a records request).

The survey authors did not conclude that current Department of Labor policy is reducing employment opportunities for young workers. In fact, the authors concluded that nursing homes should be educated on the Labor Department's policy of teens assisting older workers in the use of lifts. The Department of Labor also failed to survey state laws that further restrict the use of patient lifts to workers 18 and older, because it is dangerous for workers. And the new proposed rule does not reference the FDA-maintained database of serious patient injuries and deaths due to these lifting devices.

**It is critical that we stop this dangerous and unsubstantiated policy from going into effect. Comments are due Monday November 26<sup>th</sup>, 2018.**

Regulatory Information [Number \(RIN\) 1235-AA22](#), the Wage and Hour Division, DOL  
Submit comments here: <https://www.regulations.gov/comment?D=WHD-2018-0002-0001>