

Workplace and WBL Legal Coordination and Cooperation

This module focuses on numerous legal liabilities. Some of the liabilities are shared between the member school and the employer; however, the courts often decide true liability based on individual circumstances. These liability issues are covered in the following topics:

- General Liability
- Insurance
- Workplace Liability Issues and Transportation
- Workers Compensation
- Unemployment Compensation
- Union and Labor Guidelines

General Liability

- Each liability is unique and is decided on a case by case basis
- Every individual is responsible for his/her own actions
- Before an individual can be held liable, it must be proven that he/she must of placed a student in danger either “wantonly” and/or “willfully”
- One cannot be held responsible for what one cannot predict. Time and circumstances are important elements in prediction of action
- Work stations at work settings should be carefully scrutinized to ensure student safety at all times of the workplace experience
- Teachers and/or Coordinators should ask to view all workplace records around safety and be allowed to view any OSHA accident records. If these are not provided, you will want to follow up with OSHA. The following website has records of safety reports dating back to 2016 the [Illinois Department of Labor \(bottom of page\)](#)
- Before placing a student in a Workplace setting, ensure some basic information around safety has been taught prior. This could include, but is not limited to the following:
 - OSHA 10 Certification

- OSHA Medical Safety
- Bloodborne Pathogens and CPR training
- Intro Safety Course or Units on Equipment Safety
- If requested by the parent, teacher, student or employer, documentation of safety training should be provided as needed.
- Liability going to and from the workplace are the same as students go to and from school
- Have documentation that the parents are aware of the workplace setting and have agreed to optional transportation as needed. This could be included in your stakeholder agreement with parents.
- One cannot sign away the rights of another
- You cannot sign away something “unreasonable” or “excessive”
- The key to liability in a case rests on three words: “wanton, willful and foreseeable”

Insurance - Transportation and WBL

Insurance can, at times, be legally complex. It can become extremely difficult to work through when lives of people are at risk of damages or outside entities are included in a situation. Schools have various packages of insurance that include property damage, staff and student injury, employment liability, hacking, and a host of other legal issues. These are often bundled into Business Coverage insurance plans specifically tailored to your district's needs. However, there are really two major items that you need to take into consideration when looking at this issue from a school district perspective when it comes to Work-Based Learning

- Transportation Insurance
- Workplace Liability Insurance

When transporting students, it is important to take into consideration the following requirements set forth by the state of Illinois:

The Illinois State Board of Education (ISBE) does not encourage local education agencies to use First Division vehicles (cars, station wagons, mini-vans, 10 passengers or less which includes the driver), taxi cabs, medical carrier or medi-car, and suburbans) for pupil transportation; rather, they should be the exception and a last resort alternative when a

school bus is not an option. Public or non-public schools using First Division vehicles, including taxi cabs, that transport pupils on a regular route must ensure that:

- all vehicles are inspected at an Illinois Department of Transportation (IDOT) inspection lane every 6 months or 10,000 miles (whichever is first) [625 ILCS 5/13-109];
- insurance policies issued or renewed must ensure that the vehicles are properly insured with a minimum liability amount of \$2,000,000 combined single limit accident or \$1,000,000 liability combined with a \$5,000,000 umbrella policy [625 ILCS 5/12-707.01] effective January 1, 2017;
- the driver of such vehicles used to transport pupils on regular routes (to and from school) and between attendance centers, as well as curriculum-related trips have valid School Bus Driver Permit; and
- the district/contractor maintains a listing of the drivers' names and copies of the drivers' licenses showing that they have a School Bus Driver Permit or a renewal letter.

Liability insurance policies issued or renewed on and after January 1, 2013 shall comply with the following:

1. any vehicle that is used for a purpose that requires a school bus driver permit and is used in connection with the operation of private day care facilities, day camps, summer camps, or nursery schools shall carry a minimum of liability insurance in the amount of \$1,000,000 combined single limit per accident;
2. all other vehicles which are used for a purpose that requires a school bus driver permit shall carry a minimum of liability insurance in the amount of \$2,000,000 combined single limit per accident. This minimum insurance requirement may be satisfied by either a \$2,000,000 combined single limit primary commercial automobile policy or a \$1,000,000 primary commercial automobile policy and a minimum \$5,000,000 excess or umbrella liability policy;
3. and any commuter van or passenger car used for a for-profit ride sharing arrangement shall carry a minimum of liability insurance in the amount of \$500,000 combined single limit per accident. Effective August 24, 2012.

For further information on your district's needs or rules, refer to your district policies for further advice on Transportation issues.

Workplace Liability Issues

Any business, non-for-profit, or government workplace needs to have workplace liability insurance under the law. Employees who receive W-2's, and even subcontractors receiving 1099 tax status are covered under most insurance policies that have workplace liability insurance. Questions on how students who are partaking in a WBL experience outside of school in an internship, clinical experience, or non-paid work often throw a wrench in the gears to this discussion. Please speak with your legal department and confirm with your insurance agent the rules and regulations impacting your insurance provider before sending students out on WBL experiences. As a teacher coordinator, you should partner with your building administrator or with the district office to ensure that the insurance coverage is in place as needed. Although you do not need to know all the details of the policy, you do need to receive confirmation that coverage is in place.

Some considerations do arise from WBL workplace experiences in reference to workplace liability insurance. Students who do sign a W-2 at a local business should be covered under that business insurance. Please have the community business provide documentation of their insurance policies prior to stepping foot in their facility. If the student is providing subcontract work and is getting paid, they would fall under the 1099 licensing that would protect them in workplace situations. Again, make sure you have a record of the participating organization/business prior to sending students off to these workstations. Students not getting paid can still be covered under the workplace insurance of the community organization or business, but it is best practice to notify the insurance agent who holds the policy to ensure coverage is valid on the students. Some business insurance plans will not cover employees under the age of 18, so partner with employer partners to double check for the fine details to ensure students under 18 are covered by their policy.

It is important to understand that even though a business has insurance, schools should develop a plan to have their own insurance. Liability is an incredibly difficult legal situation to navigate and making sure your district has coverage on-top of any additional insurance the business has is best practice. These conversations on coverage can be handled between school districts and businesses in their user agreements.

Workers Compensation

Illinois law requires employers to provide workers' compensation insurance for almost everyone who is hired, injured, or whose employment is localized in Illinois. Sole proprietors, business partners, corporate officers, and members of limited liability companies may exempt themselves. Overall, it is estimated that 91% of Illinois employees are covered under the Act.

Be aware that in June 2013, a Federal Judge ruled that interns were, in fact, employees, and thus should have the same worker's compensation and labor rights as any other employee. The complaint said that "in misclassifying many of its workers as unpaid interns, Fox Searchlight (film company) has denied them the benefits that the law affords to employees, including unemployment and worker's compensation insurance, sexual harassment and discrimination protections, and, most crucially, the right to earn a fair day's wage for a fair day's work."

Case - Glatt v. Foxlight Searchlight Pictures Inc

This legal precedent has offered challenges around the country on what is settled law on this matter. Would student interns from a high school or students participating in a work shadow program or work training be covered under this precedent? It is unclear if they would as the case law is so new that there are legal questions to it. It is safe to say that you should consult your district's legal counsel and business owner/community organization to ensure that the student safety is a priority in the WBL setting. Establishing a process that is consistent with all business/community organizations may reduce the chance of issues arising around workers compensation.

Unemployment Compensation

Anyone that files a W-2 or 1099 is potentially eligible for unemployment benefits under certain conditions. Student interns, or non-paid students are not eligible for unemployment because they are not compensated employees. Unemployed individuals are encouraged to apply at the [Illinois Department of Employment Security \(IDES\)](#).

The following employment is generally not covered by unemployment compensation:

1. Self-employment;
2. Certain agricultural labor and domestic service;
3. service for relatives;
4. service of patients in hospitals;
5. certain student interns;
6. certain alien farm workers;
7. certain seasonal camp workers;
8. railroad workers, who have their own unemployment program; and
9. Work-study programs (Work-Based Experience Courses are a work-study program).

Union and Labor Guidelines

The Federal Department of Labor has been clear that certain careers are off limits for minors due to safety issues that require highly trained and skilled labor. These careers often have restrictions due to labor agreements as well. Unions have been a significant part of the work progression in the United States and remain a powerful force in labor guidelines and legislation. This is because a safe working environment is better for all citizens, and that is probably more true in Illinois than in most other states.

Labor Laws Specific to 16- and 17-Year-Olds

There are certain occupations in which students who are under the age of 18 CANNOT work. These occupations have been so designated by the Secretary of the Department of Labor. The following occupations have been declared to be particularly hazardous for students who are under the age of 18:

- Manufacturing and storing of explosives.
- Motor-vehicle driving and outside helper on a motor vehicle.
- Coal mining.
- Logging and saw milling.
- Power-driven woodworking machines.
- Exposure to radioactive substances.
- Power-driven hoisting apparatus, including forklifts.
- Power-driven metal-forming, punching, and shearing machines.
- Mining, other than coal mining.
- Operating power-driven meat processing equipment, including meat slicers and other food slicers, in retail establishments (such as grocery stores, restaurants, kitchens and delis), wholesale establishments, and most occupations in meat slaughtering, packing, processing, or rendering
- Power-driven bakery machines including vertical dough or batter mixers.
- Power-driven paper-products machines including scrap paper balers and cardboard box compactors.
- Manufacturing bricks, tile, and kindred products

- Power-driven circular saws, band saws, and guillotine shears
- Wrecking, demolition, and ship breaking operations
- Roofing operations and all work on or about a roof
- Excavation operations

While these are just a few examples of safety regulations that were developed with labor organizations, you may have local union issues arise if students are placed in situations where they are doing the work of a certified union member. For example, the local painters union is the “go to” labor for the school district’s painting and wall maintenance. Students are being recruited by a WBL teacher to start work on some of the school’s walls to repaint in order to “spruce them up.” While this may seem like a great opportunity for students to take ownership in learning a paint skill, it may be in direct opposition to the union labor agreements in place.

Another example is general maintenance of the school buildings. A WBL coordinator wants to teach students skills in metal shop on how to fix the indoor air quality of the air conditioning and heating systems. Again, while this might seem like a fantastic learning opportunity for students to take ownership in their school setting, it could be both a safety risk and directly break an already agreed upon labor agreement. When work is centered around the school building, ensure that you are checking with the appropriate administration to ensure that you are not risking legal action or in opposition to labor laws or collective bargaining agreements with school staff. You might also find that if you engage these labor organizations, they are willing to come in, assist students with the fixing of these projects, and show them a skill they otherwise would have never learned. Learning from the union members exposes the students to the profession, teaches them the need to get certifications, a driver license, and other requirements to join the union in the future. It also potentially opens them up to a mentoring relationship with union members that can lead to apprenticeship and pre-apprenticeship opportunities.