

EPI comments regarding young workers in health care occupations

Public Comments • By [Heidi Shierholz](#) • December 10, 2018

Melissa Smith
Director of the Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue NW
Washington, DC 20210

RE: RIN 1235-AA22

Submitted via [regulations.gov](https://www.regulations.gov)

Dear Ms. Smith,

The Economic Policy Institute (EPI) is a nonprofit, nonpartisan think tank created in 1986 to include the needs of low- and middle-income workers in economic policy discussions. EPI conducts research and analysis on the economic status of U.S. workers and on the impact of economic policies on working people. EPI submits these comments in response to the notice in the Federal Register requesting comment on the Department of Labor’s proposal that would allow 16- and 17-year-olds to independently operate power-driven patient lifts. The Department claims that its proposal will increase the participation of young workers in health care occupations without reducing worker safety. A careful analysis reveals that there is no evidence for these claims, and we urge the department to abandon this rulemaking.

To assess whether this proposal would, as the Department claims, increase employment opportunities of 16- and 17-year-olds, we examined whether the recent policy change that the Department is proposing to reverse *decreased* employment opportunities of 16- and 17-year-olds. Before 2010, 16- and 17-year-olds were not prohibited from independently using power-driven patient lifts to transport patients and residents in medical settings such as nursing care facilities. In 2010, however, the Department expanded Hazardous Occupation Order 7 (HO 7)—an expansion that, among other things, prohibited 16- and 17-year-olds from

operating power-driven patient lifts. In response to public input, the Department issued a nonenforcement policy in 2011, specifying that it would not assert a violation of HO 7 when a trained 16- or 17-year-old, under certain specified conditions, assists a trained adult in the operation of patient lifts. The Department reports, however, that it has continued to hear claims that, because 16- and 17-year-olds are still prohibited from *independently* operating these devices, their employment opportunities have decreased. The proposed rule would remove the operation of power-driven patient lifts from the list of activities that HO 7 prohibits, returning to pre-2010 status when 16- and 17-year-olds were permitted to independently operate power-driven patient lifts.

To assess the employment effect of the proposed rule, which would be a return to the pre-2010 status when 16- and 17-year-olds were allowed to independently operate patient lifts, we compared the employment of 16- and 17-year-olds prior to 2010 to the employment of 16- and 17-year-olds after 2011, when the current policies were put into place. We focused on nursing aides in nursing care facilities to maximize the likelihood of detecting employment effects, since this is the group most affected by this policy. To achieve large enough sample sizes, we combined seven years of data in the period preceding 2010 (2003–2009) and in the period following 2011 (2012–October 2018; data from November 2018 and December 2018 were not included because they were not available when these comments were submitted).

The workers most like 16- and 17-year-olds are other teens, i.e., 18- and 19-year-olds. If employers were shifting employment in nursing care facilities away from 16- and 17-year-olds as a result of the 2011 policy, then one would expect the share of 16- and 17-year-olds out of all teen workers to drop. And that is in fact what happened. Among teen nursing aides in nursing care facilities, 16.2 percent were age 16 or 17 in the 2003–2009 period, and 14.8 percent were age 16 or 17 in the 2012–2018 period, a drop of 1.4 percentage points. However, *that raw comparison is not appropriate* given broader, longer-run teen employment trends—in particular the relative decline in 16- and 17-year-old employment as, for example, some young potential workers are becoming more and more likely to focus on nonemployment activities they believe will look good on college applications. Economywide over this period, the share of 16- and 17-year-olds out of all teen workers dropped by 3.5 percentage points, from 37.5 percent to 34.0 percent. This was a substantially *larger* drop than what was seen among nursing aides in nursing care facilities.

In other words, once broader trends in teen employment are taken into account, the 16- and 17-year-old employment share in nursing care facilities was actually *higher* than would have been expected in the later period. That means that, anecdotes cited by the Department notwithstanding, there is no *empirical* evidence that the current policy has hurt the employment of 16- and 17-year-olds. **Since there is no empirical evidence that the earlier policy change hurt the employment of 16- and 17-year-olds, there is also no evidence that the proposed rule would improve the employment opportunities of 16- and 17-year-olds.**

It is worth noting that the Department's estimate that 23,249 16- and 17-year-olds would gain employment as a result of the changes proposed in the NPRM is deeply flawed. The

Department simply multiplies the number of unemployed 16- and 17-year-olds by the share of total U.S. employment that is in health care services, hospitals, and nursing and residential care facilities (6.7 percent). This approach is utterly divorced from the actual policy change in question and—bucking all standards of assessing the impact of policy—makes no attempt to account for broader trends that are unrelated to the potential policy change. For example, using the Department’s methodology, if this policy had been proposed in 2013—when the fact that the economy had had much less time to recover from the Great Recession meant there were over 50 percent more unemployed 16- and 17-year-olds than there are today—the Department’s estimate of the number of 16- and 17-year-olds who would gain employment as a result of the proposal would have been more than 50 percent higher, which is nonsensical. *Any* estimate of the number of 16- and 17-year-olds who would gain employment as a result of this proposal must use the employment impact of the recent policy changes to shed light on what might happen if they are reversed, and must take into account broader structural and cyclical trends in teen employment. Using an approach that does these standard things, like the approach described above, yields zero employment effects of the proposed policy. Importantly, this means the other benefits estimated by the Department that are based on its deeply flawed analysis of the employment impact of the policy—e.g., the wages earned, taxes paid, and experience gained by their estimated 23,249 workers who would gain employment as a result of the rule—also do not exist.

A careful analysis shows that the Department’s claim that its proposal will increase employment of young workers in health care occupations does not stand up to scrutiny. As a result, this proposed change will not achieve the Department’s goals of increasing the participation of young workers in health care occupations and enhancing their future career skills and their earnings potential without reducing worker safety. We therefore respectfully request that the Department abandon this rulemaking. Thank you for your attention.

Sincerely,

Heidi Shierholz, Ph.D.

Senior Economist and Director of Policy at the Economic Policy Institute in Washington, D.C.