



Removing Legal Barriers around Work-based Learning

THE STATE'S ROLE IN WORK-BASED LEARNING

As the nation's education leaders and employers work together to create a well-prepared, competitive workforce, work-based learning – a strategy that has existed for decades – is back in the spotlight as an effective strategy for connecting students' classroom learning to their future careers.

With this renewed interest, the work-based learning of today is being transformed as a means to build on students' academic experience and career interests, rather than simply to release them from the school day for work that is unconnected to their education. Work-based learning can and should be available to all students regardless of whether they are enrolled in a Career Technical Education (CTE) program of study or not. What is most important is that the experience is informed by workplace standards and is connected to students' classroom learning as a way to provide context and relevancy.ⁱ

The *Connecting the Classroom to Careers* series takes a closer look at the state's role in expanding high-quality work-based learning opportunities for all students, with a particular focus on untangling the major barriers at the K-12 level.

Each installment will explore a specific issue and highlight innovative or leading state approaches, as well as key policy questions and relevant resources that state and local leaders should consider as they examine their own systems.

What is Work-based Learning?

Work-based learning is an educational strategy that offers students an opportunity to reinforce and deepen their classroom learning, explore future career fields and demonstrate their skills in an authentic setting.

This series defines work-based learning as a continuum of experiences that helps prepare students for postsecondary education and careers. High-quality work-based learning should begin in the early grades with activities that help build students' awareness of possible careers. This exploration continues through middle and high school with job shadowing or mentoring to better inform students' decision making, and culminates with more intensive career preparation activities such as school-based enterprises, internships and pre-apprenticeships as students move along in their career pathway from high school to postsecondary education.ⁱ

THE STATE'S ROLE IN REMOVING LEGAL BARRIERS AROUND WORK-BASED LEARNING

Employers are increasingly eager to engage with schools, from being mentors and guest speakers to providing company tours and validating curriculum on advisory committees.ⁱⁱ Yet, access to authentic learning experiences in the workplace often remains limited for high school students. With a 16 percent unemployment rate for individuals under the age of 18, many are missing out on an opportunity to hone their employability skills, gain technical knowledge and experience the workplace and potential careers.ⁱⁱⁱ

For many employers, the hesitation to participate in work-based learning appears largely rooted in concerns about child labor laws and liability, and employers aren't alone in these concerns as often school administrations cite the same reasons for not offering such experiences. However, federal and state laws do not necessarily prohibit youths under 18 from being employed, making it an important first step for leaders to understand those laws and how they take shape in practice.^{iv}

Debunking these myths is critical to scaling work-based learning. Several states are tackling these challenges in a variety of ways – from training teachers to becoming experts on state and federal laws to creating alternative solutions to ease employers' concerns regarding insurance. Starting with educating themselves, state agency staff can play an instrumental role in helping correct misperceptions about having students under the age of 18 in the workplace.

KEY QUESTIONS WHEN CONFRONTING LEGAL BARRIERS TO WORK-BASED LEARNING

As state leaders examine their existing regulatory frameworks and related professional development, there are a number of key questions and issues they should take into consideration, including:

Assessing the Current Landscape

- What *federal* and *state* laws, regulations and/or guidance impact K-12 work-based learning (e.g., age requirements, nature of the work, hours worked, and compensation received)?
- Which state-level agencies regulate work-based learning or equivalent experiences? Is your office connected with the right people in those agencies? What opportunities exist to discuss challenges surrounding work-based learning with these agencies?
- How has your state engaged key stakeholders such as employers, human resource experts, insurance providers, schools and parents around these issues?
- What are the greatest misconceptions about legal barriers among key stakeholders?
- Does your state provide training to key stakeholders regarding legal issues affecting work-based learning?
- If so, which key stakeholders are targeted with this training? Does it include district- and school-level decisionmakers?

Liability-related

- How does your state help school districts and employers navigate around questions of liability

(e.g., sample agreements or waivers, checklists, guidance, etc.)?

- Are there any local examples of school districts and employers working through the challenge of liability for work-based learning placements that can serve as a model for other districts?
- What provisions already exist in state, school or district insurance policies that could also apply for work-based learning?
- Are there any existing state-level or third-party organizations that can serve as an intermediary to help mitigate liability concerns or manage the administrative components of work-based learning for K-12 students?

Creating a WBL-friendly environment

- What steps need to be taken to create a state environment that encourages and supports work-based learning (e.g., legislative/regulatory actions, guidance, or training)?
- In what ways does your state communicate with employers, district and school personnel, and parents around legal issues affecting work-based learning? Do you need to tailor your engagement to each stakeholder audience?
- Is there a strategy in place for these communications?

ENSURING WORK-BASED LEARNING SAFETY IN NEW JERSEY

The New Jersey Department of Education has a long history of collaborating with other state agencies to understand the real and perceived legal barriers around work-based learning – known as “structured learning experiences” in the Garden State.

One product of this collaboration is the [New Jersey Safe Schools](#) project, which is a comprehensive health and safety training to help schools reduce occupational hazards in CTE programs and work-based learning. Since 2004, the state has trained 2,500 teachers, resulting in no serious student injuries in work-based learning reported since the project's launch.

GETTING STARTED

This collaboration began in the mid-1990s as New Jersey began to consider how to implement the now-defunct federal School-to-Work Opportunities Act grant.^v By the early 2000s, the federal law and its funding support had ended, but the impact of this federal law can still be seen today in New Jersey.

Prior to this collaboration, work-based learning in New Jersey had been available only to CTE students and only if the supervising teacher had a cooperative education certificate. As state education department staff began to think through how to expand these experiences for all students as envisioned by the School-to-Work Act as well as the Individuals with Disabilities Education Act (IDEA), a conversation began to take place around the legal rights and limitations for students participating in work-based learning, a key element of both laws. Knowing they were not legal experts in this area, staff members reached out to their peers in the Wage and Hour Division of the state's Department of Labor and Workforce Development to better understand the legal aspects of work-based learning.

CRAFTING A REGULATORY FRAMEWORK FOR WORK-BASED LEARNING

Though the discussion began around liability, it quickly became clear that several state agencies needed to harmonize their regulations regarding special education, health and safety, and labor. Soon after, work began to develop a regulatory framework to support K-12 work-based learning in the state. Issues to be tackled included: allowing

Core Elements of the School-to-Work Act

The federal School-to-Work opportunities passed in 1994 and provided federally funded grants to states and local organizations to create a career development system to improve all high school students' transitions from school to work. The act encouraged states and local partners to create programs that best fit their needs but required all programs to include:

- **School-based learning** that included rigorous instruction linked to workplace experiences;
- **Work-based learning** that included work experience, structured training or other experiences that were linked to students' career interests and school curricula; and
- **Connecting activities** that would help link employers and schools to make the school and work-based elements happen.

Understanding Structured Learning Experiences in New Jersey

“**Structured Learning Experience** means experiential, supervised, in-depth learning experiences aligned to the Core Curriculum Content Standards that are designed to offer students the opportunity to more fully explore career interests within one or more of the Career Clusters. [These experiences] are designed as rigorous activities that are integrated into the curriculum and that provide students with opportunities to demonstrate and apply a high level of academic, and/or technical skills, and develop personal, academic and career goals.”

Excerpt from New Jersey Administrative Code: N.J.A.C. 6A:19-1.2

teachers without a cooperative education certificate to supervise these activities; ensuring health and safety of students while on a work site; liability; and providing unpaid work-based learning experiences.

To do this, the state convened a diverse group of stakeholders including staff from the department of education, state and federal departments of labor, Occupational Safety and Health Administration (OSHA), the special education community, and cooperative education coordinators. This committee helped craft a set of regulations that included **definitions** for these experiences and **permission** for paid and unpaid school-sponsored work experiences in non-hazardous occupations, which now mirrors similar federal regulations.

TEACHING THE TEACHERS

Yet, the work didn't end with a set of new regulations. Now that the regulations required all districts to provide work-based learning opportunities for students, state labor staff insisted it was equally important the supervising teachers complete a formal training course to ensure they understood the child labor and safety and health regulations and how to translate them into practice. Each participating regulatory agency was charged with developing curriculum for the training on their relevant regulations. The result was a six-day training that defines what a teacher should know and be able to do regarding the safety and health for students, child labor, wage and hour, and educational requirements of work-based learning. By completing the training, teachers are eligible to supervise paid and unpaid structured learning experiences in non-hazardous occupations. Cooperative education experiences still must be supervised by cooperative education coordinators.

Structuring the training like this meant any teacher with one year of successful teaching under a standard teaching certificate who completes the training could supervise students in structured learning experiences. The state intentionally structured it this way to give school districts the most flexibility when deciding which teaching staff may be appointed to supervise structured learning experiences. Teachers may also attend the training independently.

Today, the state holds several training sessions a year, and offers program completers access to a listserv where they can submit questions to the state education department, along with resources on the department's website. School districts that receive funding from the Carl D. Perkins Career and Technical Education Act (Perkins) are permitted to use that funding to pay for the training. District funds may also be used.

The state education department now is developing optional training for school administrators after realizing that some teachers, armed with knowledge about how to ensure safe experiences for students, would return to school unable to use their knowledge because the administration was not familiar with the requirements for work-based learning. This decision was facilitated by the cross-agency state team that meets quarterly to advise the state education department on work-based learning as well as other issues regarding youth employment.

New Jersey's Safe Schools Program

The New Jersey Safe Schools Program is managed by the New Jersey Department of Education's (NJDOE) Office of Career Readiness and administered by the Center for School and Community-based Research and Education at the Rutgers University School of Public Health.

The seven-day training includes the following courses:

- New Jersey Wage and Hour and Wage Payment and Child Labor Laws, Regulations and Hazardous Orders Course (1 day)
- Federal Wage and Hour and Child Labor Laws, Regulations and Hazardous Orders course (1 day)
- OSHA 10 Plus NJDOE Student Accident and Injury Data and Reporting Requirements (2 days)
- Designing and Implementing Student Training Plans course (3 days)

Source:

<http://www.njsafeschools.org/about/index.html>

UNDERSTANDING LIABILITY AND RISK IN WORK-BASED LEARNING

Though state and federal laws allow work-based learning opportunities, some employers and human resources departments still may not feel entirely comfortable with the risk they would be assuming. Some states have come up with different approaches to address this issue, particularly as it relates to liability and the listed “employer of record.”

MITIGATING LIABILITY CONCERNS

In **New Jersey**, state education staff set out to educate themselves about liability to find the best solution to this potential barrier. This exploration led them to the New Jersey School Boards Insurance Group, a non-profit public entity of the New Jersey School Boards Association that insures many New Jersey school districts. After meeting with insurance risk analysts, it became apparent that each party to a work-based learning experience, including cooperative experiences, need not incur any new liability with a student placement because the school district could expand its liability policy to cover work-based learning as it would for other off-school site events such as travel for sports teams and field trips. Additionally, employers are already required to carry liability policies for their workplaces.

What still needed to be addressed was the increased risk presented by students being placed at work sites. Increased risk can be mitigated through training for supervising teachers, as discussed, as well as for students. All students participating in work-based learning must participate in safety training at the work site prior to commencing in work-based activities. If students are using potentially hazardous tools and equipment, they must pass a safety test on that equipment at the school and at the work site before using them. The state department of education recently piloted online OSHA training for students, and will pilot in the 2016-2017 school year personal protective equipment training for teachers and students. Knowledge and training are important efforts towards mitigating risk.

In the state’s required training plans for structured learning experiences, New Jersey included language stating that each party – the school district and the employer – would assume no new liability and details what each agrees to cover. Therefore, when a new workplace experience is being brokered, the school district and employer can share each other’s liability rider or policy and come to an agreement about what will be covered.

In **Kentucky**, the state launched in 2013 a new youth apprenticeship program, Tech Ready Apprentices for Careers in Kentucky (TRACK), but quickly discovered a major obstacle. Some employers, particularly in manufacturing, had concerns regarding the liability of having high school-age employees. They also cited a lack of human resources capacity to take on student apprentices.

While federal law does have restrictions regarding minor students’ exposure to “**hazardous occupations**,” there are exemptions for training programs such as apprenticeships.^{vi} Yet despite these exemptions, many employers said their insurance carriers prohibited them from having employees under 18 or that under-18 employees would greatly increase the cost of workers’ compensation insurance – a financial burden they weren’t willing or able to take on, according to the state CTE office.

This prompted the Department to seek a solution that would mitigate these concerns, and found its answer in the national staffing firm, Adecco. Adecco agreed to serve in an intermediary role to assume the administrative and legal elements of work-based learning as well as helping to recruit employers and prepare students to enter the workplace. After being vetted by the legal departments for Adecco and the state, the Youth Employment Solutions program – also known as YES! – launched in February 2015 as a pilot.

Though the original agreement was intended for the state-operated Area Technology Centers, Adecco and the state added an addendum to allow local school districts to use Adecco as the “employer of record” for students’ cooperative education experiences, in hopes it would encourage more employer participation. Currently, all 53 Area Technology



Centers and 15 local school districts are participating in the program. Sixteen employers are actively participating in the program including manufacturing, health care and information technology companies.

Through this agreement, Adecco provides workers' compensation liability for the eligible CTE students, and in turn, mitigates the risk for employers. Student eligibility is determined by ensuring the work assignment aligns with the student's chosen career pathway. Adecco also manages the human resources components such as payroll and personnel records, and conducts safety evaluations to ensure the placements abide by state and federal laws. The signed memorandum of understanding between the state and Adecco also makes clear that the risks and responsibilities that each party bears.

Adecco offers this service to employers as it would other temporary staffing placements, but there is no cost to the state or participating school districts. Employers are not required to participate in the YES! program to take on youth apprentices or cooperative placements. Once the agreement is signed, Adecco provides tailored employability skill preparation and job coaching for these students.

Finally, as a third approach, the non-profit [Foundation for California Community Colleges](#) has provided suite of [back-office services](#), called [Career Catalyst](#), to employers seeking to hire students for jobs or paid internships. The Foundation assumes liability, performs human resources functions and ensures the students are well prepared and compensated for their work. For employers who also need help finding the best student, the Foundation, in partnership with the Linked Learning Alliance, offers the [Launchpath](#) site, an online matching tool to help employers find prospective interns whose skills and internship interests align with the organization's work. LaunchPath is a separate, but complementary, service to Career Catalyst, and is an important part of building a statewide infrastructure to support the scaling of work based learning.



FOUNDATION for CALIFORNIA
COMMUNITY COLLEGES

The Career Catalyst services are offered to employers for a fee, but are generally far less expensive than a staffing firm may cost, according to foundation staff. The program began as a means to streamline the bureaucratic process to hire student interns in state government offices but has since expanded to include public and private sector employers. While some of the students served are as young as 16 years old, most are between ages 18-22 and engaged through the state's workforce development system. However, the foundation is working to expand these offerings to K-12 institutions. For example, California-based utility giant, Pacific Gas and Electric, is using Career Catalyst for student internships through its energy-focused career academies. An estimated 120 students are being offered paid internships through this partnership. As the state's [Career Pathways Trust](#) initiative continues to grow and progress, the foundation expects this service to be used more often by employers for K-12 work-based learning placements.

LESSONS LEARNED

Though there are some legal barriers to work-based learning for employers or schools, they can be overcome with dedication, communication and a willingness to find alternative solutions, when necessary. Each of the states profiled in this brief have overcome these challenges but not without learning some lessons along the way:

Partnerships and Collaboration:

- State departments of labor and workforce development have a lot of expertise and knowledge that can be leveraged to identify and address the laws and regulations that will impact K-12 work-based learning.
- Don't assume that employers have a full understanding of all laws governing the workplace, especially those concerning minors and work-based learning. Misunderstandings and misinterpretations can lock students out of authentic, meaningful learning experiences. States, as well as local schools, should educate themselves about these laws to break down these misconceptions. Make sure supervising teachers are well-versed and, importantly, know how to find answers to questions that may arise regarding these laws and regulations.

- The students' training plans must ensure their work is meaningful, related to their classroom learning and for their educational benefit. While an "employer of record" option may streamline the hiring process, states and schools must remain vigilant that student interns are not simply being used to augment a company's workforce and are not replacing a regular employee.^{vii}

Communications

- Create a clear communications strategy for all key stakeholders – including human resources professionals, employer supervisors, teachers, school administrators and parents– to ensure that everyone understands the truth about work-based learning's legal barriers.
- Make sure that everyone is using the same language or understands how the terms translate or are used in different contexts to reduce confusion and miscommunication. Many terms pertaining to work-based learning have federal and state definitions under wage and hour and child labor laws and regulations.

Professional Development:

- It is important to train the school personnel who will be actively monitoring students on the work site, but the state should also plan to educate and train school and district decision makers about work-based learning.
- Routinely revisit the training to adapt to participant feedback and update it to reflect current trends.

RESOURCES

- U.S. Department of Labor's (DOL) Fair Labor Standards Act provisions for [child labor](#), [Youth Rules](#) website and [Child Labor Bulletin 101](#)
- New Jersey Department of Education's [Structured Learning Experiences](#) website
- New Jersey Wage and Hour Laws and Regulations: [Subchapter 18](#) School-to-Work Program
- New Jersey Child Labor Regulations: [Subchapter 1](#)
- New Jersey [Structured Learning Experiences Requirements](#) (found in Chapter 19, Subsection 4)
- New Jersey [Safe Schools Program](#)
- Kentucky [Work-based Learning Manual](#) and YES! program [brochure](#)
- Foundation for California Community College's [Career Catalyst](#)

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^{vii} Fact Sheet #71: Internship Programs under the Fair Labor Standards Act. <http://www.dol.gov/whd/regs/compliance/whdfs71.htm> 4/4/2016