



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

Education Interim Committee
65th Montana Legislature

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TO: Education Interim Committee (EDIC)
FROM: Pad McCracken, Committee Staff
RE: Legal issues related to work-based learning
DATE: June 12, 2018

Following a panel presentation on innovations in career and technical education and work-based learning at your March meeting, the committee directed staff to investigate whether legislative action might help reduce any real or perceived barriers for K-12 school districts and businesses to collaborate in offering more work-based learning opportunities for students. Areas the committee suggested investigating included:

- Workers' compensation
- Child labor laws, including hazardous job prohibitions and exceptions
- School and employer liability
- Prevailing wage laws

The short answer is that I found no clear need for legislative action to address any of these areas. Longer answer follows.

First off, this document should not be viewed as legal guidance by school districts or businesses exploring work-based learning partnerships. It was produced by a nonattorney researcher for a legislative audience based on the request described above.

One of the key elements to meaningful, safe, and enduring work-based learning arrangements between educational institutions and businesses is a written agreement that addresses expectations and responsibilities for all parties. Montana's "Child Labor Standards Act" emphasizes this in its exceptions to prohibited employment of minors, which include requirements for such an agreement.

School districts and businesses will need to ask themselves a number of "what if" questions as they contemplate forming work-based learning partnerships and drafting these written agreements, but a number of issues come down to whether the student-learner is considered an employee or not.

* Again, this document should not be viewed as legal guidance. School districts and businesses need to address these questions for themselves.	Employee Regular paid employee Registered apprentice Paid intern* (Generally, the student-learner is compensated)	Nonemployee Preapprentice Youth apprentice Unpaid intern* Job Shadow (Generally, the student-learner is <u>not</u> compensated)
Employer pays into work comp, unemployment insurance, etc?	Yes	No. Unless the employer and insurer agree to include volunteer student-learners under the employer’s policy.
Fair Labor Standards Act (FLSA) applies?	Yes	No
Hazardous work and other state child labor laws apply?	Yes, but there are exceptions for registered apprenticeships and student learners (see Title 41, chapter 2, part 1, MCA)	
Equal opportunity/anti-discrimination protections apply?	Yes	Yes
If the student-learner is hurt at the job site...	Covered under employer’s workers’ comp	Needs to be addressed. Student <u>can</u> be considered a volunteer under school’s or business’s workers’ comp policy.
If the student-learner damages property while at job site...	Covered under employer’s liability policy	Needs to be addressed. <u>Could</u> be covered under school district’s general liability policy.

* Internships can be either paid or unpaid. Generally a paid intern will be considered an employee. In order to determine whether an intern must be paid, FLSA uses a 7-prong test that fundamentally asks who is the primary beneficiary—if it is the employer because of the work accomplished, the intern must be paid; if it is the student because of the educational benefit, the internship can be unpaid.

I queried both the National Conference of State Legislatures and the Education Commission of the States asking what they knew of other states addressing barriers to work-based learning through statutory changes. It appears that while a few states have created statewide programs for youth apprenticeship or preapprenticeship in statute, in most states work-based learning is doable under the existing statutory framework. Some of this is because “work-based learning” is not new. The phrase was added to Montana workers’ comp laws 20 years ago.

[Advance CTE](#) is an association of state directors of career and technical education that published a report in April 2016 titled [Removing Legal Barriers around Work-based Learning](#). The report emphasizes the need for education, guidance, and training to “debunk myths” regarding the existence of legal barriers to conducting WBL. Advance CTE also publishes an annual review of [State Policies Impacting CTE](#), which includes enacted legislation and

nonlegislative policy. I reviewed these reports for 2013 through 2017. Listed below are some of the legislative changes related specifically to work-based learning.

2013

Florida enacted [SB1076](#), which among other things:

- Provided financial incentives to teachers who provided instruction leading to students earning industry-recognized credentials
- Allowed students to substitute CTE courses and work-based learning experiences for math and science courses previously required for graduation

Iowa's [HF604](#) provided \$1.5 million to support state efforts connecting businesses and the education system.

2014

Several states incentivized school districts and/or businesses to create work-based learning opportunities for students through grant programs and tax credits or through incorporating work-based learning into their state accountability systems.

2015

Indiana's biennial K-12 budget included a \$300 payment to school districts for every student participating in a work-based learning experience.

2016

Georgia's [HB402](#) allowed workers' comp insurers to provide a 5% premium discount to employers certified by the state department of education as being a "work-based learning employer" as a way of incentivizing businesses to work with schools in developing work-based learning opportunities.

2017

With the passage and implementation of ESSA, a number of states incorporated work-based learning into their state accountability plans as a way of gauging student career readiness.

North Carolina's biennial budget included requirements that school districts offer work-based learning opportunities and form business advisory councils to ensure collaboration on CTE and work-based learning.

Texas's [HB639](#) authorized school districts to purchase insurance coverage for students participating in work-based learning experiences and provided participating students with immunity from liability.

Recent Montana legislative changes related to work-based learning

The following table shows the fluctuations in the state K-12 CTE appropriation (also referred to as "Secondary Vo-ed") that is distributed to school districts based on a complex matrix of factors that generally relate to the robustness of a district's CTE programs.

(in millions)	2013	2014	2015	2016	2017	2018	2019
CTE Approp	\$1.0	\$1.5	\$1.5	\$2.5	\$2.5	\$1.49	\$1.49

[HB 356](#) (2015; Don Jones) increased the annual appropriation for CTE by \$1 million in each year of the 2017 biennium and designated that the increase was for the enhancement and expansion of CTE programs and not to reduce local district investment in CTE.

For the 2019 biennium, CTE was originally appropriated \$2 million in each year of the biennium in HB 2 (2017 Regular Session), but then reduced twice in [SB 261](#), once at the Level 2 revenue trigger and again at Level 4.

Also in 2017, [HB 647](#) (Don Jones) revised the CTE distribution formula in [20-7-306, MCA](#), to require that OPI incorporate:

- (e) *student participation in workforce development activities, including but not limited to:*
- (i) *attainment of industry-recognized professional certifications; and*
 - (ii) *work-based learning programs, such as internships and registered apprenticeships.*

The committee may want to monitor the implementation of this new requirement.

The committee may also wish to receive updates regarding the implementation of [HB 308](#) (2017; Schreiner), which created tax credits for employers hiring workers who are participating in a registered apprenticeship program. The bill also required the Department of Labor and Industry to disseminate information to all high schools in the state about registered apprenticeship programs. It's important to remember that registered apprenticeships are just one form that work-based learning can take, though perhaps the most robust and formalized form.

Guidance may help

Finally, a number of states have produced guidance documents for school districts and employers looking to collaborate in creating work-based learning opportunities for K-12 students. The development of similar guidance in Montana might be beneficial.

- The Iowa Department of Education has published the [Iowa Work-Based Learning Guide](#), which provides a description of the various forms that WBL can take, a glossary of terms, and a section describing the legal requirements.
- Kentucky's Office of Career and Technical Education produced a comprehensive [Work-Based Learning Manual](#) with an entire chapter devoted to helping navigate the legal issues. Perhaps most useful is a one-page checklist of the specific requirements that must be met (see page 21).
- The Tennessee Department of Education hosts a webpage titled the [WBL Toolbox](#) with FAQs, a comprehensive implementation guide, and a one-pager called [WBL Myths vs. Facts for Industry](#) aimed at eliminating industry hesitations about conducting WBL.