DOL to Allow Limited Use of Power-Driven Patient Lifts by Teens

On Wednesday, July 13, 2011 The Department of Labor's Wage and Hour Division (WHD) released Field Assistance Bulletin No. 2011-3 (the “Bulletin”), which details the circumstances under which 16- and 17-year-olds will be permitted to assist in the operation of power-driven resident lifts. Specifically, the WHD states that it will exercise enforcement discretion and not assert child labor violations involving 16- and 17-year-olds who assist a trained adult worker in the operation of floor based vertical powered resident lifts, ceiling-mounted vertical powered lifts and sit-to-stand lifts, only when ALL of the following six conditions are met:

1. The teen has successfully completed the 75 clock hours of nurse aide training required by the Federal Nursing Home Reform Act (or a higher state standard where applicable) AND has successfully completed the nurse aide competency evaluation detailed in 42 C.F.R. § 483.154 (or a higher state standard where applicable).

2. The teen is not operating by himself or herself the lifting device AND the teen is assisting in the use of the device as a junior member of at least a 2-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 device(s) being used.

3. The teen may:
   a. set up, move, position and secure unoccupied lifting devices;
   b. assist trained adult employees in attaching slings to, and un-attaching slings from lifting devices prior to and after the lift/transfer of the resident is completed;
   c. assist the trained adult employees in operating the controls that activate the power to lift/transfer the resident; and
   d. act as a spotter/observer and may position items such as a chair, wheelchair, bed or commode under the resident who is being lifted/transfered.

4. The teen may not Independently engage in “hands on” physical contact with the resident during the lifting/transferring process (such as placing or removing the sling, including pushing or pulling the sling under/around the resident; adjusting the sling under/around the resident; and manipulating the resident when placing, adjusting or removing a sling)—the teen, however, may assist in these “hands on” activities when assisting a trained adult employee who is manipulating, guiding, rotating, or otherwise maneuvering the resident during the lift/transfer. The teen may similarly assist a trained adult employee who is pushing, pulling or rotating lifting devices when the device is engaged in the process of lifting/transferring a resident.

5. The teen is not injured while operating or assisting in the operation of a lifting device. In the event of an injury, the employer will be subject to the assessment of child labor civil monetary penalties as permitted by Section 16(e)(1) of the Fair Labor Standards Act. (The WHD has stated that only serious injuries, defined in Field Assistance Bulletin No. 2010-1 (Jan. 20, 2010) as injuries that require treatment more extensive than first aid and results in the youth missing school or work, or having their normal activities curtailed, for 5 days or more, will be subject to assessment of civil monetary penalties.)

6. The employer has provided to the teen employee a copy of the document that is attached to the Bulletin as Attachment A.