

# Youth Working Lobster Boats as Independent Contractors in Maine

## What Youth and Families Need to Know

The Maine Department of Labor provides this guidance in relation to state enforcement of child labor laws. Contact the US Department of Labor Wage and Hour Division for questions about federal enforcement of child labor laws.

**State labor standards, including child labor laws and restrictions, apply to employees. They do not apply to independent contractors. Child labor laws are based on the State's interest in protecting children and youth from employment situations that may place them in harm's way for the financial benefit of others. This means it is important to know how a minor is working in the lobster industry first, so you know what labor standards and protections, if any, apply.**

These examples are provided to help you think about whether a young person is working as an employee or an independent contractor.

**Example 1:** Simon is 9 years old and has a student license from the Department of Marine Resources (DMR). Simon fishes his own traps from a skiff. Simon's dad goes out with him to make sure he's safe, but Simon does all the work. He keeps all the money he makes when he sells his catch. **Simon is an independent contractor who works for himself.**

**Example 2:** Louise is 15 years old and fishes with her uncle as the Sternman. She has fished with him for several years. Louise bands lobsters and baits pockets but doesn't run the hauler or drive the boat. She is paid a percentage of the boat's daily catch value. **Louise is an independent contractor, whether or not she has a student license from DMR.**

**Example 3:** Henry is 17 years old. He does not have a student license. He works as a third man on a neighbor's boat. He has worked for other captains and has a reputation for being a solid hand. Henry is paid a flat day rate, not an hourly rate. **Henry is an independent contractor.**

***If the location and type of work look like one of these examples, then the minor working in the lobster fishery will most likely be considered an independent contractor. HOWEVER, each situation is different.***

***The Maine Department of Labor looks at the facts of each case when there is a complaint or report of a child labor violation. Learn more about the criteria for an independent contractor on the back of this flyer.***

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## Who is an INDEPENDENT CONTRACTOR under Maine law?

Under Maine law (26 MRS §1043(11)), an independent contractor must exhibit **ALL** these characteristics:

- ✓ Have the right to control the means and progress of the work, except as to the final results;  
*A crewman is responsible for banding lobsters but can decide whether to do it after each string or every few strings.*
- ✓ Be customarily engaged in an independently established trade, occupation, profession or business;  
*A crewman has a student or apprentice license from DMR, has a history of working on lobster boats, or has other experience in the fishery.*
- ✓ Have the opportunity for profit and loss as a result of the services performed;  
*A crewman is paid based on a percentage of the value of the daily catch, not an hourly wage.*
- ✓ Hire, pay, and supervise their own assistants, if there are any; **AND**
- ✓ Be able to work for other clients/customers, even if they choose not to.  
*A crewman can work for other captains or vessels if and when they want.*

The independent contractor must also have at least **THREE** of these characteristics:

- ✓ Substantive investment in the facilities, tools, instruments, materials and knowledge needed to do the work;  
*A crewman has their own oilskins, boots, and/or other gear needed to do the work.*
  - ✓ No limitation to work exclusively for the other individual or entity;  
*A crewman can work for other captains or vessels if and when they want.*
  - ✓ Responsibility for satisfactory completion of the work and failure to complete the work;  
*A crewman given the task of banding the lobsters works with minimal supervision to get the job done in the time required.*
  - ✓ Contract that defines the relationship and provides rights in the event the contract is terminated before the work is done;  
*This would be very unusual with youth working for a captain/vessel.*
  - ✓ Payment based on factors directly related to the work performed and not solely the time worked;  
*A crewman is paid based on the value of the daily catch, not an hourly wage.*
  - ✓ Work performed is outside the usual course of business for which the service is performed;  
*This would be very unusual with youth working for a captain/vessel.*
- OR**
- ✓ Determination that the person is an independent contractor by the federal Internal Revenue Service.  
*This would be very unusual with youth working for a captain/vessel.*

