



in our own backyard

THE HIDDEN PROBLEM OF
CHILD FARMWORKERS IN AMERICA

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Part II: How Can This Happen?

What is Oppressive Child Labor?

Legal definitions of oppressive child labor from the U.S. government and international organizations.

*Source: Documentary, Lost Features: The Problem of Child Labor,
Produced by the American Federation of Teachers in November 1999*



Many regulating agencies, both within the United States and internationally, determine what constitutes “oppressive child labor.”

I THE UNITED STATES

- In the United States, child labor was first regulated by the Fair Labor Standards Act (FLSA) enacted in 1938. Amendments to the FLSA were passed in 1949, 1966 and 1974. The following are some key results as they relate to child labor. “Hazardous employment” refers to 17 areas the Secretary of Labor has determined are too dangerous for children. Note the distinction between agriculture and non-agricultural sectors¹:

AGRICULTURAL OCCUPATIONS				NON-AGRICULTURAL OCCUPATIONS (a)		
Age	Allowable Occupations	Allowable Hours	Other Conditions	Allowable Occupations	Allowable Hours	Other Conditions
16-17	All	All	None	Non-hazardous (b)	All	None
14-15	Non-hazardous (c)	Unlimited hours outside of school	None	Non-hazardous explicitly permitted by DOL (d)	Up to 40 hours in non-school week; up to 8 on non-school day; up to 3 on school day; between 7 a.m. and 7 p.m. (9 p.m. summer)	None
12-13	Non-hazardous (c)	Unlimited hours outside of school	Written consent of parent or work on farm where parent employed	None	None	N/A
Under 12	Non-hazardous (c)	Unlimited hours outside of school	On small farm with written consent of parent (e)	None	None	N/A
10-11	Hand harvest short season crops (non-hazardous)	Up to 5 hours a day and 30 hours a week outside of school	Under forms of waiver issued by DOL, which includes various protections including parental consent	None	None	N/A

- (a) Does not include the following occupations that have statutory exemptions allowing children to work regardless of age: newspaper deliverers, actors, and makers of certain live wreaths.
- (b) Occupations not declared particularly hazardous or detrimental to health or well-being by the Secretary of Labor under 29 C.F.R. 570.50 et seq. For children between 16 and 18 years of age.
- (c) Agricultural occupations not declared particularly hazardous under 29 C.F.R. 570.70 et seq.
- (d) Non-manufacturing and non-mining occupations declared permissible under 29 C.F.R. 570.31 et seq.
- (e) A small farm is an agricultural employer who did not use, during any calendar quarter in the preceding year, more than 500 days of agricultural labor.

¹ General Accounting Office, Child Labor in Agriculture: Changes Needed To Better Protect Health and Educational Opportunities (GAO-HEHS-98-193) (Washington: General Accounting Office, 1998) p. 31

- On September 23, 2003, Congressman Tom Lantos (D-CA), joined by more than 30 House colleagues, introduced the Youth Worker Protection Act (H.R. 3139). This is a comprehensive bill that updates the nation's child labor laws, providing more protections for working minors from hazardous work and too much work. These laws have not been comprehensively updated since the enactment of the Fair Labor Standards Act in 1938.

II THE UNITED NATIONS

In 1989, the United Nations adopted *The Convention on the Rights of the Child*. As of 1999, every member of the U.N. except two, the United States and Somalia, has ratified it. This sets a record for the most-ratified U.N. convention. The following articles of the convention relate to children in the workforce:

- Article 27- *Every child has a right to a standard of living adequate for their physical, mental, spiritual, moral, and social development. States shall ensure that parents provide such an environment, and if the parents are unable to do this, the state will provide material assistance, particularly nutrition, clothing and housing to children.*
- Article 28- *Every child has a right to free and compulsory education. It is the duty of the state to provide this and encourage different forms of secondary education accessible to every child and to make higher education available to all on the basis of capacity.*
- Article 31- *Every child has the right to rest and leisure, to engage in play and recreational activities and to participate freely in cultural life and the arts.*
- Article 32- *Every child has the right to be protected from work that threatens his or her health, education or development. The state shall set minimum ages for employment, regulate working conditions, and enact penalties and sanctions to enforcement.*
- Article 37- *No child shall be subjected to torture, cruel, inhuman or degrading treatment or punishment.*
- Article 38- *States shall protect children under the age of 15 from involvement in the armed forces.*

III THE INTERNATIONAL LABOR ORGANIZATION

The ILO adopted the *Minimum Age Convention (138)* during their convention in 1973.

- The States that ratify this Convention undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. One of the principal means to be taken for this purpose is the prohibition of employment or work for children under the duly fixed minimum age.

- The Convention sets a number of minimum ages depending on the type of employment or work. The first principle is that the minimum age should not be less than the age for completing compulsory schooling and in no event less than age 15. For countries whose economic and educational facilities are insufficiently developed, the age can be set initially at 14.
- The second principle is that a higher minimum age should be set for hazardous work. This age may not be less than 18. The Convention provides that the types of employment or work deemed to be hazardous shall be determined by national laws or regulations or by the competent authority, leaving it to the individual countries to determine the content of these activities.
- Finally, in the case of light work, the minimum age can be set at 13 years, or 12 years where the economy and educational facilities are insufficiently developed.

The ILO also adopted the *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (182)* during their convention in June 1999. Will this convention be as universally ratified as its U.N. equivalent? Specifically, the convention:

- In Article 1, calls upon states to take “immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor” for everyone under 18 years of age.
- In Article 3, specifies that child labor includes “all forms of slavery or practices similar to slavery,” involvement in prostitution and pornography, involvement in drug trafficking or other illicit activities, and work that by its nature is likely to harm the health, safety or morals of children.
- In Article 6, calls upon states to "implement programs of action to eliminate as a priority the worst forms of child labor."0
- In Article 7, calls on Member states to ensure access to free basic education and take other steps to prevent children from becoming laborers, to remove children engaged in the worst forms of child labor and to provide appropriate assistance in rehabilitation and integration for such children.