



# in our own backyard

THE HIDDEN PROBLEM OF  
CHILD FARMWORKERS IN AMERICA

<http://www.ourownbackyard.org>

## Part II: How Can This Happen?

### **Fair Labor Standards Act**

Explanations of key provisions in the primary U.S. law that sets employment standards and how they relate to children.

*Source: The Child Labor Coalition,  
<http://www.stopchildlabor.org/USchildlabor/fact1.htm>*



## An Overview of Federal Child Labor Laws

The Fair Labor Standards Act (FLSA) establishes child labor standards (as well as minimum wage, overtime pay, equal pay, whistleblower, and record keeping standards). These standards affect full-time and part-time workers in the private sector and in federal, state, and local governments.

The FLSA's child labor provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being.

The FLSA regulates child labor by (a) setting minimum ages for jobs that have been determined to be particularly hazardous, (b) setting minimum ages for all other jobs (That is, jobs that are not considered particularly hazardous), and (c) limiting the hours that children are permitted to work. There are also exceptions to some of these requirements.

### *Minimum Age for Particularly Hazardous Work:*

The FLSA distinguishes between particularly hazardous work for children and other work that is not considered particularly hazardous.

The minimum age for particularly hazardous work in agriculture is age 16, whereas the minimum age for particularly hazardous work in all other sectors of the economy is age 18. These minimum ages are established by law, and hence would require an act of Congress to be changed.

The FLSA gives the Secretary of Labor the discretion to issue regulations describing what occupations in agriculture and in all other sectors of the economy are particularly hazardous to children. These regulations are called hazardous Occupation Orders (or more commonly Hazardous Orders of HOs).

There are 11 Hazardous Orders in agriculture that forbid children under age 16 from doing any of the following jobs:

1. Operating a tractor in most situations.
2. Operating or assisting to operate specified machinery such as grain combines, hay mowers and balers, feed grinders, and power post-hole diggers
3. Operating or assisting to operate trenchers or earth-moving equipment, fork lifts, potato combines, and power-driver circular, band, or chain saws.
4. Working on a farm in a yard, pen, or stall occupied by a bull, boar, or stud horse maintained for breeding purposes; a sow with suckling pigs; or a cow with newborn calf (with umbilical cord present).
5. Felling, bucking, skidding, loading, or unloading timber with a butt diameter of more than 6 inches.
6. Working from a ladder or scaffold at a height of over 20 feet.
7. Driving a bus, truck, or automobile while transporting passengers, or riding on a tractor as a passenger or helper.
8. Working inside certain enclosed areas such as fruit, forage, or grain storage facilities designed to retain an oxygen-deficient or toxic atmosphere; as well as in a manure pit.
9. Handling or applying agricultural chemicals that are acutely toxic.
10. Handling or using a blasting agent, such as dynamite, ammonium nitrate, and blasting

caps.

11. Transporting, transferring, or applying anhydrous ammonia.

There are 17 Hazardous Orders in all industries other than agriculture that forbid children under age 18 from doing any of the following jobs.

1. Manufacturing or storing explosives
2. Driving a motor vehicle and being an outside helper on a motor vehicle
3. Coal mining
4. Logging and sawmilling
5. Operating power-driven wood-working machines
6. Exposure to radioactive substances and to ionizing radiations
7. Operating power-driven hoisting equipment
8. Operating power-driven metal-forming, punching, and shearing machines
9. Mining, other than coal mining
10. Operating power-driven meat-processing machines, and slaughtering, meat packing or processing, and rendering
11. Operating power-driven bakery machines
12. Operating power-driven paper-products machines, scrap paper balers, and paper box compactors (except that 16- and 17-year-olds can load – but not operate or unload – scrap paper balers and paper box compactors that meet certain safety requirements)
13. Manufacturing brick, tile, and related products
14. Operating power-driven circular saws, band saws, and guillotine shears
15. Wrecking, demolition, and ship-breaking operations
16. Working in roofing operations (including work in close proximity to a roof, such as installing or repairing gutters and cable and satellite dishes)
17. Working in certain excavation operations

There are exceptions to some of these Hazardous Orders that permit children younger than age 16 in agriculture, and children younger than age 18 in all other industries, to do particularly hazardous work if they are apprentices or student-learners

### ***Minimum Age for Non-hazardous Work***

In jobs that are not considered particularly hazardous, the FLSA sets the normal minimum age for employment in agriculture at 14 years, whereas in every other industry the normal minimum age is 16 years.

In agriculture there are three exceptions to the normal age 14 minimum age:

- (1) A child of ages 12 or 13 may work where a parent or guardian (a) consents to the child's employment or (b) is employed on the same farm as the child
- (2) A child under age 12 may work where (a) the child is employed by a parent or guardian on a farm owned or operated by the parent or guardian, or (b) the child is employed, with the consent of a parent or guardian, on a small farm as defined in the FLSA
- (3) A child of age 10 or 11 may work as a hand-harvest laborer for no more than 8 weeks in a year.

In all other industries apart from agriculture, there are four exceptions to the minimum age of 16:

- (1) A child of age 14 or 15 may work in an occupation (except in mining or manufacturing) only if the Secretary of Labor determines that such work would not interfere with the child's schooling or health and well-being. Using this authority, the Secretary has issued regulations permitting children of ages 14 and 15 to work in limited, specified jobs in retail food service, and gasoline service establishments.
- (2) Child actors and performers are not subject to the FLSA's child labor protections.
- (3) Children engaged in the delivery of newspapers to the consumer are not subject to the FLSA's child labor protections.
- (4) Children working at home in making evergreen wreathes are not subject to the FLSA's child labor protections.

### ***Hours of Employment:***

In agriculture, the only restriction on hours of employment is that children cannot work during school hours. Apart from this requirement, there is no limit on how early in the day children may begin work or how late in the day they may work, and not even any limit on the number of hours in the day they may work during the day.

Outside of agriculture, there are far greater hours-of-work protections for child workers. Specifically, those 14- and 15-year-olds as described above who are permitted to work in certain retail, service, and gasoline service station jobs cannot work during school hours, and in addition they cannot work before 7:00 a.m. or after 7:00 p.m. (after 9:00 p.m. from June 1 through Labor Day), and they cannot work more than 3 hours on a school day or more than 18 hours in a school week, or more than 8 hours on a non-school day or more than 40 hours in a non-school week.

There are no work hours limitations for 16- and 17-year-olds. The above restrictions do not apply to youth who are employed by their parents on a farm owned or operated by their parents.

### ***Wages:***

The federal minimum wage is \$5.15 per hour. Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a work week. There are various exemptions to these requirements under which some employees are not entitled to minimum wage or overtime pay, and some employees are entitled to minimum wage but not to overtime pay. For example, no one employed in agriculture is required to be paid overtime pay. Moreover, workers on small farms, and certain other agricultural employees, are not entitled to the minimum wage.

**Youth Minimum Wage:** A minimum wage of not less than \$4.25 an hour is permitted for employees under 20 years of age during their first 90 consecutive calendar days of employment with an employer. Employers are prohibited from taking any action to displace employees in order to hire employees at the youth minimum wage. Also prohibited are partial displacements such as reducing employees' hours, wages, or employment benefits.

**Subminimum Wage Provisions:** The FLSA provides for the employment of certain individuals at wage rates below the statutory minimum. Such individuals include student-learners (vocational education students). Such employment is permitted only under certificates issued by the U.S.

Department of Labor's Wage and Hour Division.

***Federal and State Child Labor Laws:***

Most states have child labor laws. State child labor laws may be more protective or less protective of working children than the federal child labor laws (FLSA). For example, states may have different minimum ages for employment, different hours of work restrictions, and additional occupations identified as hazardous.

If a working child is protected by both federal and state child labor laws, then the more protective law (whether it is the state or the federal law) is followed.

***For Questions About Federal Child Labor Laws:***

Visit the U.S. Department of Labor's [Web site](#), or contact DOL's Wage and Hour Division and ask to speak to the Child Labor Contact.

Northeast Region: Call Philadelphia at (215) 861-5800 if you live in these states:

- Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, West Virginia.

Southeast Region: Call Atlanta at (404) 893-4525 if you live in these states:

- Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Midwest Region: Call Chicago at (312) 596-7180 if you live in these states:

- Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin.

Southwest Region: Call Dallas at (214) 850-2600 if you live in these states:

- Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming.

Western Region: Call San Francisco at (415) 848-6600 if you live in these states or U.S. territories:

- Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Washington.