



in our own backyard

THE HIDDEN PROBLEM OF
CHILD FARMWORKERS IN AMERICA
<http://www.ourownbackyard.org>

Part III: What Can Be Done?

Child Labor Coalition Recommendations

Suggested amendments to U.S. laws and enforcement practices suggested by the Child Labor Coalition in its 2005 report, [Protecting Working Children in the United States: Is the Government's Indifference to the Safety and Health of Working Children Violating an International Treaty?](#)

*Source: Child Labor Coalition,
<http://www.stopchildlabor.org/pressroom/clc%20report.pdf>*



Protecting Working Children in the United States: Is the Government's Indifference to the Safety and Health of Working Children Violating an International Treaty?

7. Recommendations

The Child Labor Coalition (CLC), representing a constituency of more than 40 nongovernmental organizations concerned about protecting the health and safety of working minors, believes the U.S. government should address the questions related to U.S. compliance with ILO Convention 182. In light of the safety and health hazards to working children outlined in this report, the CLC makes the following recommendations to the U.S. Department of Labor, the U.S. Environmental Protection Agency, and the Congress:

To the U.S. Department of Labor:

1. NIOSH Report. DOL should prioritize the many NIOSH recommendations for strengthening Hazardous Orders, in order to protect children from the most dangerous jobs. DOL should revise first those HOs that would have the greatest likelihood in reducing the greatest number of occupational deaths and serious injuries and illnesses, and then address the other HOs. DOL should issue proposed regulations making these changes and invite comment from interested parties. All of this should be done within 12 months. DOL has already had more than three years to work on this important project, and further delay is not justifiable. Prompt action is now essential to protect working children from deaths and injuries.

2. Enforcement. DOL should take three steps immediately. First, it should greatly increase the number of hours devoted to child labor enforcement. Doubling the 58,043 hours spent in fiscal year 2004 would still not reach the 143,000 hours spent in fiscal year 1990 in child labor enforcement, but doubling the hours should be accomplished within two years. There are more children working now than in 1990, and in any event until there is a private right of action, thus enabling children to bring their own lawsuits, enforcement activity by DOL is all the more important. Second, DOL should target enforcement more effectively. The key is to find employers who are most likely to have violated the law. Making use of state workers' compensation data on deaths and injuries to children is one very helpful way to do this. DOL needs to use this approach and other means to find child labor violations. Third, DOL must cease immediately the practice it used in the Wal-Mart case and a few other cases in which it gives employers advance notice of investigations and thereby enables the employers to cover up evidence of violations.

3. Civil Money Penalties. DOL needs to revise on a top priority basis its regulations on determining the level of a child labor civil money penalty. These penalty regulations need to (a) use more objective criteria, (b) indicate how each criterion is to be weighted, and (c) provide for higher penalties. Penalties set by DOL are too often lowered by judges, often drastically, because of the subjective factors in the present regulations and inadequate regulatory guidance on how to weight the various factors. And for a law in which the maximum penalty is \$11,000, the

median penalty assessed of \$717.78 in 2004 is far too low.

To the U.S. Environmental Protection Agency:

1. Pesticides. Within no more than 12 months, EPA needs to make every reasonable effort to devise reentry intervals (REIs) for children, so that young workers are not allowed to reenter a field after pesticides have been used on it until it is safe for children, with their developing organs and greater sensitivity to toxic chemicals, to be there. This is the main revision needed to EPA's Worker Protection Standard, but there are others as well, spelled out in the report by the Government Accountability Office (GAO).

To Congress:

1. Amend the FLSA to provide children in agriculture the same protections as children in other industries. Three key amendments are needed to achieve this result. First, the minimum age for hazardous work in agriculture must be raised from 16 to 18, so that all children in all employments will be protected equally. Second, the normal minimum age for non-hazardous work in agriculture must be raised from 14 to 16, in order to equalize the rules for all working children. Third, the restrictions on hours that children can work must be strengthened in agriculture, so that children in agriculture enjoy the same hours of work protections as all other children.

2. Amend the FLSA to provide a private right of action for child labor violations. Under existing federal law, if any child is employed in violation of the child labor requirements, only DOL can bring a lawsuit, and the penalty that is finally determined must be paid to the United States Treasury. In order to provide a greater incentive on the part of employers to comply with the law, lawsuits should also be permitted by children who are employed in violation of the law. The maximum employer liability for each violation should remain at the level for a penalty assessed by DOL (currently \$11,000), but the money in a private action should be paid by the employer to the child (or, in the case of a death, to the parents or guardians of the child). The inability of DOL to enforce the law adequately requires that others have a role in enforcement. FLSA minimum wage and overtime lawsuits are permitted both by DOL and by individual employees, and the FLSA should be amended to allow the same approach in child labor cases.