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The Fair Labor Standards Act (FLSA) Child Labor Provisions

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Summary

The Fair Labor Standards Act (FLSA) of 1938 prohibits the employment of "oppressive child labor" in the United States, which the act defines—with some exceptions—as the employment of youth under the age of 16 in any occupation or the employment of youth under 18 years old in hazardous occupations. The act includes several exemptions, however, that create a complex set of thresholds that depend on the child's age, local school hours, the nature of the work (e.g., occupation, industry, and work environment), parental involvement in the child's employment, and other factors. Notably, exemptions to the act's child labor provisions create separate rules governing children's employment in agriculture and in non-agricultural work.

For non-exempt children, the minimum age for employment in non-agricultural occupations is

- 18 years for hazardous occupations;
- 16 years for employment in non-hazardous occupations; and
- 14 years for a limited set of occupations, with restrictions on hours and work conditions.

With some exceptions, the minimum age for employment in agricultural occupations is

- 16 years for employment in any agricultural job, including hazardous agricultural occupations, with no restrictions on hours of work;
- 14 years for employment in non-hazardous agricultural jobs outside of school hours; and
- any age, for employment in non-hazardous agricultural jobs, outside of school hours, with parental consent, when certain conditions are met concerning farm size, the nature and duration of work, and other requirements.

The FLSA provisions prohibit (1) the employment of oppressive child labor for children covered by the act, and (2) the interstate shipment of goods produced in an establishment in or about which oppressive child labor is employed. But not all work performed by underage children is unlawful under the act.

The FLSA authorizes the Secretary of Labor to conduct workplace inspections and investigations to determine if oppressive child labor is present and enforce the child labor provisions. The Secretary may assess civil money penalties to employers who violate the provisions or pursue action in federal courts.

Employers who violate the FLSA child labor provisions may be assessed a civil penalty of

- up to $11,000 for each employee who was the subject of a child labor violation, or
- up to $50,000 for each violation that causes the death or serious injury of a minor employee; a penalty may be doubled if the violation is a repeated or willful violation.

Since FY2007, the Department of Labor (DOL) has concluded more than 9,700 cases in which employers violated FLSA child labor provisions.

U.S. district courts have jurisdiction to enjoin violations of the FLSA's child labor provisions. Criminal penalties are also prescribed for willful violations of the FLSA's child labor provisions. Any person who willfully violates these provisions will, upon conviction, be subject to a fine of not more than $10,000, imprisonment for not more than six months, or both.

Since the enactment of the FLSA, various courts have resolved cases involving the meaning and operation of the law's child labor provisions. Early cases focused on the movement of goods produced by minors and whether an employer's activities were restricted by the provisions. More recent cases have examined the direct employment of minors in oppressive child labor. Although there do not appear to be a substantial number of recent reported cases, DOL continues to pursue enforcement of the child labor provisions through litigation, as evidenced by court filings in 2015.

This report describes the FLSA child labor provisions, accompanying DOL regulations, and their administration. Taken together, these constitute what is commonly known as "federal child labor law." In addition, all states have child labor laws, compulsory schooling requirements, and other laws that govern children's employment and activities. No state law may weaken the worker protections provided by the FLSA. However, state laws that impose greater worker protections will supersede those provided by the FLSA. Such state protections are not discussed in this report.

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Introduction

The Fair Labor Standards Act (FLSA) of 1938 defines and prohibits the employment of "oppressive child labor" in the United States.[1] The act establishes a general minimum age of 16 years for employment in non-hazardous occupations and a minimum age of 18 years for employment in any occupation determined by the Secretary of Labor to be hazardous to the health or well-being of minors. However, children younger than 16 may work if certain conditions are met, and rules for agricultural and nonagricultural employment vary significantly.

Not all oppressive child labor is unlawful under the FLSA. The act's child labor provisions do not apply, for example, to child entrepreneurs and children who volunteer their time for charitable organizations. Certain occupations (e.g., newspaper delivery) are entirely excluded from coverage. Children who in no way participate, support, or work for enterprises that engage in interstate commercial activities nor work in proximity to establishments that ship goods across state lines are also not covered.

This report is a guide to the FLSA child labor provisions, accompanying Department of Labor (DOL) regulations, and their administration. Taken together, these constitute what is commonly known as "federal child labor law." In addition, all states have child labor laws, compulsory schooling requirements, and other laws that govern children's employment and activities. No state law may weaken the worker protections provided by the FLSA. However, state laws that impose greater worker protections will supersede those provided by the FLSA. Such state protections are not discussed in this report.[2]

Provisions Addressing Oppressive Child Labor

The FLSA includes four child labor provisions, two of which address the employment of oppressive child labor, which the act defines—with some exceptions—as the employment of youth under the age of 16 in any occupation or the employment of youth under 18 years in hazardous occupations.[3] These provisions—at Section 12(c) and Section 12(a) of the act—create a direct and an indirect prohibition on the employment of oppressive child labor, respectively.[4]

Section 12(c): Prohibited Employment of Oppressive Child Labor

Section 12(c) of the FLSA creates a direct ban on the employment of oppressive child labor under certain conditions. Section 12(c) states,

[1] The Fair Labor Standards Act (FLSA) also provides for a federal minimum wage, overtime pay, and employers' record-keeping responsibilities. For an overview of the FLSA see CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, by David H. Bradley, Benjamin Collins, and Sarah A. Donovan.

[2] 29 U.S.C. §218(a) provides, in relevant part, that "no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter."

[3] 29 U.S.C. §203(l). See section "Exemptions from the Child Labor Provisions" of this report for a discussion of the exemptions, and section "Minimum Age for Employment" for minimum age thresholds for employment that result from FLSA child labor provisions and exemptions.

[4] The other two child labor provisions authorize the Secretary of Labor to enforce the child labor provisions, including through investigations, inspections, and review of employer records. This authority is discussed in the section "Administration of Child Labor Provisions" of this report.

> No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.[5]

Section 12(a): Prohibited Shipment of "Hot Goods"

Section 12(a) of the FLSA restricts the shipment of certain goods that have been produced in proximity to oppressive child labor—called "hot goods."[6] It provides, in relevant part,

> No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed.[7]

This provision does not ban the employment of oppressive child labor directly, but restricts the *interstate shipment of goods* made in proximity to oppressive child labor. Child workers are protected under this provision even if they are not employed by the establishment that produces and ships the goods.[8]

Coverage of FLSA Child Labor Provisions

The FLSA child labor provisions may apply to an individual child, an enterprise in which a child works, or an establishment that produces goods in proximity to child labor.[9] These three types of

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[5] 29 U.S.C. §212(c).

[6] Similar FLSA hot goods provisions also apply to goods produced in violation of minimum wage and overtime requirements; see 29 U.S.C. §215(a)(1).

[7] 29 U.S.C. §212(a). DOL clarifies the meaning of the phrase "in or about" at 29 C.F.R. §570.110, which notes that a child is employed *in an establishment* when he or she performs "occupational duties on the premises of the producing establishment" or where the child performs most "duties off the premises but is regularly required to perform certain occupational duties in the establishment, such as loading or unloading a truck, checking in or out, or washing windows." A child is employed *about an establishment* if the child performs duties "sufficiently close in proximity to the actual place of production to fall within the commonly understood meaning of the term 'about'" and "the occupation of the minor is directly related to the activities carried on in the producing establishment ... By way of example, a driver's helper employed to assist in the distribution of the products of a bottling company who regularly boards the delivery truck immediately outside the premises of the bottling plant is considered employed "in or about" such establishment, without regard to whether he ever enters the plant itself." That example notwithstanding, the regulation concludes that "no hard and fast rule can be laid down which will once and for all distinguish between employments that are 'about' an establishment and those that are not. Therefore, each case must be determined on its own merits."

[8] To be "hot," the goods must be produced in and removed from an establishment in or about which oppressive child labor was employed. It is not necessary for the child to be involved in the production of the goods or in their shipment. After 30 days, the goods are said to have "cooled" and may be shipped out of state. However, any hot good that has already been shipped is permanently hot and may not be shipped out of state at all. See §33a02 of DOL, Wage and Hour Division, *Field Operations Handbook, Rev 665*, Chapter 33: Child Labor—FLSA, September 22, 2011, http://www.dol.gov/whd/FOH/FOH_Ch33.pdf.

[9] FLSA provisions apply to workplaces located in the United States and certain U.S. territories. See 29 C.F.R. §776.7. Congress has addressed child labor (among other labor standards) internationally through U.S. trade agreements and trade preference programs, which generally require U.S. trade partners to have and enforce child labor laws. The legislation and efforts of 140 U.S. trade beneficiaries' to eliminate the "worst forms of child labor"—which include prostitution, forced labor, and hazardous work among other forms—are assessed annually by the U.S. Department of Labor's International Labor Affairs Bureau (ILAB), pursuant to the Trade and Development Act of 2000 (P.L. 106-200). ILAB reports are available at https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings. Per the Trafficking Victims Protection Reauthorization Act of 2005 (P.L. 109-164), ILAB also publishes a list of goods believed to be produced using forced labor or child labor that violates international standards. This list is available from

coverage—individual, enterprise, and establishment—have somewhat different formulations, but each requires three elements:

1. **Oppressive child labor.** With some exceptions, *oppressive child labor* means the employment of youth under the age of 16 in any occupation or the employment of youth under 18 years in hazardous occupations.
2. **Employment relationship.** The child must be *employed* by an employer (i.e., the child is not an entrepreneur or an unpaid volunteer).
3. **Commerce.** FLSA defines *commerce* as "trade, commerce, transportation, transmission, or communication among the several States, or between any State and any place outside thereof."

Where one of these elements is missing—for example, where there is no employment relationship between a child and an employer—the FLSA child labor provisions do not apply. In addition, certain occupations (e.g., newspaper delivery) and work arrangements (e.g., children working for a parent) are explicitly exempt from the child labor provisions. Where so exempt, the provisions do not apply even if all three elements listed above are present.

Individual and Enterprise Coverage of the Ban on Oppressive Child Labor

A child worker may be covered by Section 12(c) on an *individual* or *enterprise* basis. The child is covered individually if he or she is employed in oppressive child labor and engages in interstate or foreign commerce (e.g., regularly handles interstate or international mail, completes credit card transactions, uses the telephone to make interstate or international calls) or produces goods for interstate or foreign commerce.[10]

An enterprise is covered by the FLSA child labor provisions—and coverage extends to children employed in oppressive child labor therein—if it has at least two employees who engage in interstate or foreign commerce and has "annual sales or business done" of at least $500,000.[11] Regardless of the dollar volume of business, the act applies to hospitals; residential institutions providing medical or nursing care; schools (including higher education institutions); and federal, state, and local government agencies.[12]

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https://www.dol.gov/ilab/reports/child-labor/list-of-goods/. An executive order signed by President Clinton in 1999 prohibits the procurement by U.S. federal agencies and their contactors of products produced using forced or indentured child labor. See Executive Order 13126, "Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor," 64 *Federal Register* 32793, June 17, 1999. ILAB maintains a list of such products, organized by country of origin, which is available at https://www.dol.gov/ilab/reports/child-labor/list-of-products/index-country.htm. In addition, U.S. businesses operating abroad are generally covered by and must adhere to host countries' laws, including child labor laws. One indicator of the prevalence of such laws is countries' ratification of International Labor Organization (ILO) conventions on child labor. As of 2016, 168 countries have ratified the ILO Convention 138 (C. 138), which requires countries to establish a minimum working age (in most cases this minimum age cannot be below 15 years), and 180 countries have ratified ILO C.182, which calls for the elimination of the "worst forms of child labor" as a matter of urgency. See http://www.ilo.org/dyn/normlex/en/. Finally, some multinational corporations have adopted codes of conduct that establish minimum labor standards, including concerning child labor, for production and operations outside the United States.

[10] 29 C.F.R. 776.8-9.

[11] 29 C.F.R. §§779.258-779.259.

[12] 29 U.S.C. §203(s)(1).

Establishment Coverage of the Hot Goods Provision

An establishment is covered by Section 12(a) of the act (i.e., the hot goods provision) if it produces goods in proximity to (i.e., "in or about") the employment of oppressive child labor.[13] The goods produced are called hot goods and they may not be shipped out of state while the oppressive child labor is present and for 30 days after the removal of the oppressive child labor.[14] An establishment is covered by Section 12(a) even if it is not the employer of the oppressive child labor and even if the child is not covered by the FLSA provisions on an individual or enterprise basis.

Exemptions from the Child Labor Provisions

The FLSA excludes certain occupations and work arrangements entirely from coverage of its child labor provisions:

- **Children with a parental employer.** A child who works for a parent or a person standing in place of a parent (hereafter "parent")[15] in an occupation other than manufacturing, mining, or hazardous work may be employed at any age and for any number of hours.[16]
- **Child performers.** Children of any age may be employed as actors or performers in motion pictures or in theatrical, radio, or television productions.[17]
- **Newspaper delivery persons.** Children of any age may be employed to deliver newspapers to consumers.[18]
- **Evergreen wreath producers (homebased).** Children of any age may be employed as homeworkers to make evergreen wreaths and to harvest forest products used in making such wreaths.[19]

The act also relaxes restrictions on oppressive child labor in select occupations or industries—notably agriculture—by exempting them from the child labor provisions when certain conditions are met. For example, children who are 14 years old—and in some cases, at any age—may by employed in agriculture outside of school hours.[20] Congress amended the FLSA to expand the set of permissible activities for 16- and 17-year-old children working with scrap balers and paper box compactors, for 17-year-old children to drive cars and trucks, and for children who are at least 14

[13] See footnote 7 for additional discussion of the phrase "in or about."

[14] See footnote 8 for additional discussion of hot goods.

[15] The phrase "parent or person standing in place of a parent" is defined at 29 C.F.R. §570.126 to include "natural parents, or any other person, where the relationship between that person and a child is such that the person may be said to stand in place of a parent. For example, one who takes a child into his home and treats it as a member of his own family, educating and supporting the child as if it were his own, is generally said to stand to the child in place of a parent."

[16] This exemption stems from the FLSA definition of "oppressive child labor" at 29 U.S.C. §203(1), which excludes children employed by their parents in most non-hazardous occupations. DOL regulations at 29 C.F.R. §570.126 clarify that the "exemption may apply only in those cases where the child is exclusively employed by his parent or a person standing in his parents' place."

[17] 29 U.S.C. §213(c)(3).

[18] 29 U.S.C. §213(d).

[19] 29 U.S.C. §213(d).

[20] See section "Employment of Children in Agriculture" of this report for a discussion.

years old and excused from compulsory schooling to work in establishments that operate power-driven woodworking machines (but they are not allowed to operate the machines).[21]

Minimum Age for Employment

The FLSA defines oppressive child labor, generally, as the employment of a child under the age of 16 years in any occupation and the employment of a child under the age of 18 in an occupation determined to be hazardous to children by the Secretary of Labor. However, the act includes several exemptions to the child labor provisions and the oppressive child labor definition that create a complex set of thresholds that depend on the child's age, local school hours, the nature of the work (e.g., occupation, industry, and work environment), parental involvement in the child's employment, and other factors. Notably, exemptions to the act's child labor provisions create separate rules governing children's employment in non-agricultural and agricultural work.

Employment of Children in Non-Agricultural Work

For non-exempt children, the minimum age for employment in non-agricultural occupations is

- 18 years for occupations determined by the Secretary of Labor to be hazardous to the health and well-being of children (i.e., "hazardous occupations");
- 16 years for employment in non-hazardous occupations; and
- 14 years for a limited set of occupations, with restrictions on hours and work conditions, as determined by the Secretary of Labor.

Under federal law, a child under the age of 14 may not be employed unless his or her employment is explicitly excluded from the definition of oppressive child labor (e.g., a parent is the child's sole employer in a non-hazardous occupation) or exempt from the FLSA child labor provisions (e.g., newspaper delivery).

Rules Governing the Employment of Children 14 and 15 Years Old

The act directs the Secretary of Labor to establish a list of occupations—other than mining and manufacturing—that do not constitute oppressive child labor for children who are 14 and 15 years old, based on the Secretary's determination that "such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health or well-being."[22]

Permitted Work for Children Aged 14 and 15 Years

DOL regulations identify the following set of jobs and activities that—subject to hours-of-work restrictions—do not constitute oppressive child labor for children aged 14 and 15 years:[23]

- office and clerical work;

[21] P.L. 104-174 amended the FLSA to permit 16- and 17-year-old children to load materials into—but not operate or unload—certain scrap paper balers and paper box compactors, subject to safety and other requirements. P.L. 105-334 prohibits driving on public roads by employees under the age of 17 and provides conditions under which 17-year-old employees may operate cars or trucks on public roads. P.L. 108-199 amended the FLSA to create a limited exemption from the child labor provisions for certain children employed by establishments that use woodworking machinery.

[22] See 29 U.S.C. §203(l).

[23] Occupations that may be performed by minors 14 and 15 years old are identified at 29 C.F.R. §570.34. Any occupation *not listed* is forbidden. See 29 C.F.R. §570.32.

- creative work that is intellectual or artistic in nature (e.g., computer programming, teaching, graphic design);
- various sales, retail, and advertising work (e.g., cashier, advertising jobs, marking prices, assembling orders, packing and shelving);
- certain errand and delivery work performed by foot, bicycle, or public transport;
- building cleaning (e.g., vacuuming);
- maintenance of grounds without the use of power-driven equipment;
- limited kitchen work, including the preparation and serving of food and beverages, cleaning and handling of fruits and vegetables, and cleaning of certain kitchen equipment;
- cooking, with some limitations concerning the equipment used and conditions of work (e.g., no cooking over an open flame);
- loading onto and unloading from motor vehicles of personal items (e.g., lunch box) and non-power tools (e.g., rake) or protective gear (e.g., work gloves) that the minor will use as part of his or her employment;
- dispensing gasoline and oil;
- cleaning cars by hand;
- certain work that may involve riding in motor vehicles—subject to restrictions on activities, industry of work, and working conditions; and,
- under limited circumstances, certain youth who are at least 14 years of age and excused from compulsory schooling may work in an establishment where machinery is used to process wood products (but may not operate machines).[24]

A minor who is at least 15 years of age and has received training and certification in aquatics and water safety by the American Red Cross (or a similar organization) may be employed as a lifeguard at "traditional swimming pools and water amusement parks."

Explicitly Forbidden Work for 14- and 15-Year-Olds

Any job not identified by the Secretary of Labor as permitted for children 14 and 15 years of age is prohibited. However, recognizing that additional guidance may be helpful in understanding the limits of the permitted work, DOL regulations also identify *explicitly prohibited* work for children 14 and 15 years old. For example, these regulations indicate that while office work is permitted for this age group, work that requires use of a ladder is expressly forbidden.[25] Consequently, the employment of a 14-year-old child in an office to stock shelves using a ladder appears to constitute oppressive child labor and would be prohibited.

[24] Per 29 U.S.C. §213(c)(7), the child must be at least 14 years of age and exempt by statute or judicial order from compulsory school attendance beyond grade 8. The work must be supervised by an adult relative or an adult who is a member of the "same religious sect or division" as the child. The child is prohibited from operating or assisting the operation of the power-driven woodworking machines and must be protected from wood particles, flying debris, and exposure to excessive levels of noise and saw dust. See related regulations at 29 C.F.R. §570.34 (m).

[25] Office work is permitted at 29 C.F.R. §570.34(a). All work that requires the use of a ladder is prohibited at 29 C.F.R. §570.33(g).

Under DOL regulations, children aged 14 and 15 years may not work in any of the following jobs:[26]

- manufacturing, mining, or processing occupations;
- occupations declared by the Secretary of Labor to be hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being;[27]
- occupations that involve a hoisting apparatus;
- work performed in or about boiler or engine rooms, including repair and maintenance;
- occupations that involve any power-driven machinery, including but not limited to lawn mowers, golf carts, all-terrain vehicles, trimmers, cutters, weed-eaters, edgers, food slicers, food grinders, food choppers, food processors, food cutters, and food mixers;
- operating motor vehicles, serving as helpers on motor vehicles, and riding in motor vehicles, with a few exceptions;
- outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or similar equipment;
- youth peddling, which entails the sale of goods or services to customers at locations other than the employer's establishment, excluding unpaid volunteer work for charitable organizations or public agencies;
- loading and unloading of goods or property onto or from motor vehicles, railroad cars, or conveyors, with few exceptions;
- catching and cooping of poultry for transport or for market;
- public messenger service;
- occupations connected to the transportation of persons or property;
- warehousing and storage occupations;
- communications and public utilities occupations; and
- construction occupations, with exceptions for some office and sales work.

Work Hours for 14- and 15-Year-Old Children

DOL regulations require that work performed by 14- or 15-year-old children be outside school hours when school is in session. Regulations limit the number of hours performed per day and per week and the time of day when the work may occur.[28]

When school is in session, children may perform no more than 3 hours per day on a school day (including Friday), 8 hours on a non-school day, and 18 hours in one week.[29] Otherwise, when school is not in session, children may perform up to 8 hours per day and 40 hours per week.[30]

[26] 29 C.F.R. §570.33.

[27] See **Table 1** of this report.

[28] Hours standards are published at 29 C.F.R. §570.35(a). School hours are determined by the school district in which the child resides; see 29 C.F.R. §570.35(b).

[29] 29 C.F.R. §570.35(a).

[30] Ibid.

Work hours are confined to 7 a.m. to 7 p.m. except during the summer, when evening hours are extended to 9 p.m.[31]

DOL regulations provide some exceptions to the hours-of-work requirements:

- **Sports attendants.** Children who provide specific sports-attending services at professional sporting events (e.g., batboys or batgirls) may work any hours so long as they occur outside of school hours.[32]
- **Work-experience and career exploration program participants.** Children participating in certain state-run school-supervised work-experience and career exploration programs that have been approved by DOL are permitted to work during school hours up to 3 hours per day on school days. Children in these programs may work up to 23 hours per week when school is in session. All other rules regarding work hours apply.[33]
- **Work-study program participants.** A child enrolled in a DOL-approved work-study program may work up to 18 hours per week when school is in session. The child may work one day or two days per week during school hours (depending on where the child is in the program's work cycle) for up to 8 hours on that day(s).[34]
- **High school graduates and children excused from compulsory schooling.** Children who have graduated high school, been excused from compulsory schooling by the state for certain reasons, or been expelled from school and not required to attend an alternate school are exempt from regulations limiting work hours when school is in session. For this group of children, the limits placed on hours worked per day and per week when school is not in session (i.e., 8 hours per day and 40 hours per week) apply at all times during the year.[35]

Non-Agricultural Hazardous Occupations for Children Aged 16 and 17 Years

The Secretary of Labor has identified 17 groups of occupations as hazardous or detrimental to the health or well-being of children between the ages of 16 and 18 years (**Table 1**).[36] Employment in these jobs—formalized in regulations as the Secretary's "hazardous occupation orders" or "orders"—is prohibited, with limited exemptions for registered apprentices and student learners.[37] In some instances, the orders ban children's employment in entire industries (e.g., coal mining, Order 3) with some exceptions for office, sales, or maintenance work; others prohibit children's exposure to certain materials (e.g., radioactive substances, Order 6) or equipment (e.g., power-driven hoisting apparatus, Order 7).

[31] Ibid. There are no similar work hour requirements for children who are 16 years old and older.

[32] 29 C.F.R. §570.35(c)(2).

[33] 29 C.F.R. §570.36.

[34] The number of workdays per week that may take place during school hours is determined by a formula established in DOL regulations at 29 C.F.R. §570.37(c).

[35] 29 C.F.R. §570.35(c)(1).

[36] 29 C.F.R. §§570.50-570.68. As noted in the "Explicitly Forbidden Work for 14- and 15-Year-Olds" section of this report, the employment of children ages 14 and 15 years is also forbidden in these occupations.

[37] Unlike agricultural hazardous orders (section "Agricultural Hazardous Occupations" of this report), the prohibition on minors' employment in the non-agricultural hazardous occupations applies even if the child is employed by a parent. The conditions under which a registered apprentice or student learner may participate in hazardous occupation tasks are described at 29 C.F.R. §570.50(b) and (c).

Table 1. Non-Agricultural Hazardous Occupation Orders for Children Aged 16 and 17 Years

Hazardous Occupation Orders	Apprentices and Student Learners Exemption[a]	Work Not Specifically Prohibited by the Order and Exemptions[b]	Regulation
Order 1: Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosives	No	Work may be performed in retail establishments that have ammunition stores (e.g., sporting goods stores and gun clubs). Work that does not involve the handling of explosives may be performed in "non-explosives areas" that meet regulatory criteria.	29 C.F.R. §570.51
Order 2: Occupations of motor-vehicle driver and outside helper	No	Incidental and occasional driving by licensed 17-year-olds during daylight hours on public roadways is permitted when regulatory criteria are met.[c] Children who are at least 16 years old may operate motor vehicles on private property other than a mine or a logging, sawmill, or excavation site unless otherwise prohibited by law or regulation.	29 C.F.R. §570.52
Order 3: All occupations in or about any coal mine	No	Slate or other refuse picking at a picking table or certain picking chutes, and jobs performed solely in office, repair shops, or maintenance shops are permitted.	29 C.F.R. §570.53
Order 4: Forest fire fighting and forest fire prevention occupations, timber tract occupations, forestry service occupations, logging occupations, and occupations in the operation of any sawmill, lath mill, shingle mill, or cooperage stock mill.	No	Permitted work includes tasks performed in offices or in repair or maintenance shops; the construction, operation, repair, or maintenance of particular buildings or items; certain tasks in forest fire prevention; tasks performed away from the forest; the feeding or care of animals; some work involving peeling of fence posts or similar products; and specified jobs in the operation of certain permanent mills. In addition, youth who are at least 14 years old and exempt from schooling beyond grade 8 may work in establishments that operate power-driven woodworking machines if regulatory conditions are met. These youth are prohibited, however, from operating or assisting the operation of power-driven woodworking machines.[d]	29 C.F.R. §570.54
Order 5: Occupations involved in the operation of power-driven woodworking machines	Yes	Certain support tasks performed in a planing mill, box factory, or other remanufacturing department and select occupations related to veneer manufacturing are permitted.	29 C.F.R. §570.55
Order 6: Exposure to radioactive substances and to ionizing radiations	No	Work is permitted in medical facilities where exposure to ionizing radiation is less than 0.5 rem per year, and in occupations exposed to naturally occurring radiation (e.g., in soil or sunlight).	29 C.F.R. §570.57

Hazardous Occupation Orders	Apprentices and Student Learners Exemption[a]	Work Not Specifically Prohibited by the Order and Exemptions[b]	Regulation
Order 7: Occupations involved in the operation of power-driven hoisting apparatus	No	Employees may operate automatic elevators if certain safety requirements are met. Permitted work also includes operating grease rack lifts and similar apparatus used in automotive-serving establishments; amusement park rides that lack hoisting mechanisms (e.g., water rides that use conveyer belts); motorized hand trucks; hanglines (i.e., chain conveyers); and shopping cart caddies.	29 C.F.R. §570.58
Order 8: Occupations involved in the operation of power-driven metal forming, punching, and shearing machines	Yes	Employees may operate or assist in the operation of a punch press that meets DOL safety requirements. The order does not apply to the operation of machine tools (e.g., milling machines, boring machines).	29 C.F.R. §570.59
Order 9: Occupations in connection with mining, other than coal	No	Employees may work in above-ground, non-mine buildings (e.g., offices, warehouses, repair shops, living-quarters), perform repair and support activities that take place outside of mines or away from mining and hauling activities (e.g., repair of roads, surveying outside the mine), and perform select tasks in metal mills (e.g., operating jigs, hand-sorting at a picking table, clean-up work).	29 C.F.R. §570.60
Order 10: Occupations in the operation of power-driven meat-processing machines and occupations involving slaughtering, meat and poultry packing, processing, or rendering.	Yes	Certain tasks in retail establishments, coolers or chill rooms, specialized meat processing units, and shipping departments are permitted, as are occupations that require limited entry to killing floors (e.g., messengers). The killing and processing of small game (e.g., rabbits) in areas physically separated from the killing floor are permitted. The order does not apply to fish and seafood processing plants.	29 C.F.R. §570.61
Order 11: Occupations involved in the operation of bakery machines	No	Employees may operate lightweight, small capacity, portable, countertop mixers (unless used to process meat or poultry products) and certain pizza-dough rollers with required safeguards in place; set-up, adjustment, and maintenance of such pizza-dough rollers are not permitted. They may also operate select power-driven machines used for ingredient preparation and mixing; product-forming, shaping, and filling; wrapping; slicing; and pan-washing. Some cleaning of individual parts of power-driven machines is permitted.	29 C.F.R. §570.62
Order 12: Occupations involved in the operation of balers, compactors, and paper-products machines	Yes	Several paper-industry machines are not covered by this order (e.g., bag-making machines, envelope machines, waxing or coating machines). A statutory exemption provides that 16- and 17-year-olds may load materials into, but not operate or unload, certain scrap paper balers and paper box compactors, subject to safety and other requirements.[e]	29 C.F.R. §570.63

Hazardous Occupation Orders	Apprentices and Student Learners Exemption[a]	Work Not Specifically Prohibited by the Order and Exemptions[b]	Regulation
Order 13: Occupations involved in the manufacture of bricks, tile, and kindred products	No	Work is permitted if performed in or about storage and shipping rooms, offices, and laboratories of establishments in which clay construction products are manufactured; in offices of establishments in which silica brick or other silica refractories are manufactured; and in the drying departments of plants manufacturing sewer pipe.	29 C.F.R. §570.64
Order 14: Occupations involved in the operation of circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs	Yes	Certain power-driven machines may be used if equipped with full automatic feed and ejection.	29 C.F.R. §570.65
Order 15: Occupations involved in wrecking, demolition, and shipbreaking operations	No	None	29 C.F.R. §570.66
Order 16: Occupations in roofing operations and on or about a roof	Yes	None	29 C.F.R. §570.67
Order 17: Occupations in excavation operations	Yes	Manual excavation, manual backfilling, or work in trenches that does not exceed four feet in depth at any point is permitted. Excavating for buildings or other structures or working in such excavations is permitted if certain conditions are met (e.g., excavation does not exceed four feet, and side walls are sloped or shored). The order does not apply to site clearing, surface grade operations, or dredging and bore-hole drilling operations.	29 C.F.R. §570.68

Source: 29 C.F.R. Sections 570.50-570.68 and DOL, Wage and Hour Division, *Field Operations Handbook, Rev 665,* Chapter 33: Child Labor—FLSA, September 22, 2011, http://www.dol.gov/whd/FOH/FOH_Ch33.pdf.

Notes:

a. Conditions for apprenticeships and student learners are identified at 29 C.F.R. Section 570.50 (b) and (c).

b. This column includes work identified by DOL as "not specifically banned" under an order and work that is exempt by statute or regulation. It is not a complete cataloguing of permitted work. In addition, work that is excluded from a particular order is not permitted for minors if it is covered under a separate order. For a fuller discussion, including information on DOL enforcement decisions, see DOL, *Field Operations Handbook*.

c. See P.L. 105-334.

d. See P.L. 108-199.

e. See P.L. 104-174.

Employment of Children in Agriculture

Three exemptions to the FLSA child labor provisions create separate minimum age thresholds and hazardous occupations rules for children employed in agriculture.[38]

Minimum Age for Employment in Agriculture

With some exceptions, the minimum age for employment in agricultural occupations is

- 16 years for employment in any agricultural job, including those determined to be hazardous by the Secretary of Labor, with no restrictions on hours of work;
- 14 years for employment in non-hazardous agricultural jobs outside of school hours;[39]
- 12-13 years for employment in non-hazardous agricultural jobs, outside of school hours, with the written consent of a parent; written consent is not required if the work takes place on a farm that also employs the child's parent;[40]
- 10-11 years for employment to hand-harvest select crops for up to eight weeks in non-hazardous agricultural jobs, outside of school hours, with the written consent of a parent, providing the employer has obtained a waiver permitting this employment from the Secretary of Labor;[41] and
- Any age (up to 12 years), for employment in non-hazardous agricultural jobs, outside of school hours on certain small farms, with a parent's written consent.[42]

A child of any age who is employed exclusively by a parent on a farm owned or operated by the parent may work without restriction.[43]

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[38] These exemptions are codified at 29 U.S.C. §213(c)(1), (2), and (4). The FLSA definition of *agriculture* includes "farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in Section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry, or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market." See 29 U.S.C. §203(f).

[39] 29 U.S.C. §213(c)(1)(C).

[40] 29 U.S.C. §213(c)(1)(B).

[41] The conditions under which the Secretary of Labor will grant a waiver permitting the employment of 10- and 11-year-old children to harvest certain crops are described at 29 U.S.C. §213(c)(4) and 29 C.F.R. pt. 575. However, as DOL notes, "the Department was enjoined from issuing such waivers in 1980 because of issues involving exposure, or potential exposure, to pesticides (see National Ass'n of Farmworkers Organizations v. Marshall, 628 F.2d 604 (D.C. Cir. 1980)). Therefore, no waivers have been granted under FLSA section 13(c)(4) for thirty years." See Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations-Civil Money Penalties—A Proposed Rule, 76 *Fed. Register* 54836, 54842 (September 2, 2011) (to be codified at 29 C.F.R. pts. 570, 579).

[42] 29 U.S.C. §213(c)(1)(A) applies to the employment of children on farms that are exempt from FLSA minimum wage provisions because they employed fewer than 500 "man-days of agricultural labor" during any calendar quarter in the previous calendar year. FLSA defines a man-day of agricultural labor as "any day during which an employee performs any agricultural labor for not less than one hour[.]" 29 U.S.C. §203(u).

[43] 29 U.S.C. §213(c)(2) provides that children employed in agriculture by a parent on a farm owned or operated by a parent are exempt from the statutory prohibition on children's employment in hazardous agricultural occupations. See also §33f02(a)(1) for the *Field Operations Handbook*.

Hours of Agricultural Employment

With few exceptions, children employed in agriculture may not work during school hours until they are 16 years old.[44] The FLSA does not limit the number of hours per day or week that children can work in agriculture, nor does it place limits on when that work occurs outside of school hours (i.e., children may work in agriculture for any number of hours per day or week, and at any time during the day or night).

Agricultural Hazardous Occupations

With few exceptions, a child below the age of 16 may not be employed in agriculture in an occupation that is determined by the Secretary of Labor to be particularly hazardous or detrimental to the health or well-being of children under 16 years old. This prohibition does not apply to children employed by a parent on a farm owned or operated by the parent.[45] When certain requirements are met, student learners and graduates of tractor or machine operation programs that meet regulatory criteria may be employed in select hazardous occupations.[46] DOL groups hazardous occupations in agriculture in 11 employment categories that are described in **Table 2**.

[44] Children who work exclusively for a parent on a farm owned by the parent are excluded from the oppressive child labor definition and may be employed during school hours. See 29 U.S.C. §203(l) and §33f02(a)(1) of the *Field Operations Handbook*. In addition, DOL regulations note that district school hours "do not apply to minors who have graduated from high school," and therefore "the entire year would be considered 'outside of school hours' [for those children]" and "their employment in agriculture would be permitted at any time." Finally, interpretive guidance provided by DOL indicates that certain children who have been excused from compulsory schooling by their states of residence on religious grounds and have met other requirements are excused from the FLSA prohibition on work in agriculture during school hours. See 29 C.F.R. §570.123(b) and DOL, Wage and Hour Division, *Child Labor Requirements in Agricultural Occupations under the Fair Labor Standards Act (Child Labor Bulletin 102)*, June 2007, p.4, http://www.dol.gov/whd/regs/compliance/childlabor102.htm.

[45] 29 U.S.C. §213(c)(2). See Section 33f03 of the *Field Operations Handbook* for additional information. As part of a broader effort to revise FLSA regulations in 2011, DOL proposed a new regulation to formalize its interpretation of the parental exemption to hazardous agricultural employment. The proposed rule would have clarified that children under age 16 years of age are permitted to work for a parent on a farm *owned* by such parent at any time to perform any tasks in agriculture. Youth employed in agriculture by a parent on a farm *operated* (but not owned) by the parent may perform hazardous agricultural work only outside of school hours. The same proposed rule announced plans to create new agricultural hazardous orders (e.g., tobacco production and curing), define the conditions under which the parental exemption transferred to a close relative with temporary custody of a child, revise the student learner exemption, and eliminate two exemptions for children who have graduated from certain tractor and farm equipment training course, among other revisions. Public comments received in response to this proposed rule revealed considerable opposition. In response, DOL withdrew the proposed rule and announced that it would not pursue the regulation for the duration of the Obama Administration. U.S. Department of Labor, "Labor Department Statement on Withdrawal of Proposed Rule Dealing with Children Who Work in Agricultural Vocations," press release, April 26, 2012, https://www.dol.gov/whd/media/press/whdpressVB3.asp?pressdoc=national/20120426.xml.

[46] 29 C.F.R. §570.72.

Table 2. Hazardous Occupations for Agriculture

Employment Category	Exemptions		
	Parental Employer on a Farm Owned or Operated by the Parent[a]	Student Learner[b]	Qualifying Tractor- or Machine-Operation Program Graduate[c]
Operating a tractor of over 20 power-take-off horsepower or connecting or disconnecting an implement or any of its parts to or from such a tractor.	Yes	Yes	Yes
Operating or assisting to operate any of the following machines: corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, mobile pea viner, feed grinder, crop dryer, forage blower, auger conveyor, the unloading mechanism of a nongravity-type self-unloading wagon or trailer, power post-hole digger, power post driver, or nonwalking type rotary tiller.	Yes	Yes	Yes
Operating or assisting to operate—including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation—any of the following machines: trencher or earthmoving equipment; fork lift; potato combine; or power-driven circular, band, or chain saw.	Yes	Yes	No
Working on a farm in a yard, pen, or stall occupied by a bull, boar, or stud horse maintained for breeding purposes; or sow with suckling pigs, or cow with newborn calf, with umbilical cord present.	Yes	Yes	No
Felling, bucking, skidding, loading, or unloading timber with butt diameter of more than six inches.	Yes	Yes	No
Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, etc.) at a height of over 20 feet.	Yes	Yes	No
Driving a bus, truck, or automobile when transporting passengers or riding on a tractor as a passenger or helper.	Yes	No	No
Working inside a fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere; an upright silo within two weeks after silage has been added or when a top unloading device is in operating position; a manure pit; or a horizontal silo while operating a tractor for packing purposes.	Yes	No	No
Handling or applying (including cleaning or decontaminating equipment, disposal or return of empty containers, or serving as a flagman for aircraft applying) agricultural chemicals classified under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) as Category I of toxicity, identified by the word *poison* and the "skull and crossbones" on the label; or Category II of toxicity, identified by the word *warning* on the label.	Yes	No	No
Handling or using a blasting agent, including but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord.	Yes	No	No
Transporting, transferring, or applying anhydrous ammonia.	Yes	No	No

Source: Hazardous agricultural occupations described at 29 C.F.R. Section 570.71. Exemptions to the ban on children's employment in hazardous agricultural occupations are identified at 29 C.F.R. Section 570.72.

Notes:

a. Children who work for a parent on a farm owned or operated by a parent are exempt from the prohibition on children's employment in hazardous agricultural occupations. See 29 U.S.C. Section 213(c)(3).

b. Student learner requirements are described at 29 C.F.R. Section 570.72(a).

c. The requirements of qualifying tractor- and machine-operation training programs are identified at 29 C.F.R. Section 570.72(b) and (c).

Administration of Child Labor Provisions

The FLSA authorizes the Secretary of Labor to conduct workplace inspections and investigations to determine if oppressive child labor is present and to enforce the child labor provisions.[47] The Secretary of Labor has delegated inspection authority to the DOL Wage and Hour Division (WHD), which oversees enforcement of several federal laws governing workplaces.[48]

Two remedies are available for violations of the FLSA child labor provisions. The Secretary of Labor may assess civil money penalties or seek other relief, including injunctive relief.

Civil Money Penalties

Employers who violate the FLSA child labor provisions may be assessed a civil penalty of[49]

- up to $11,000 for each employee who was the subject of a child labor violation, or
- up to $50,000 for each violation that causes the death or serious injury of a minor employee; a penalty may be doubled if the violation is a repeated or willful violation.[50]

Civil penalties collected from employers for child labor violations are deposited in the general fund of the U.S. Treasury.[51] Employers may seek an exception to a civil penalty determination or may request an administrative hearing within 15 days of receiving a determination of penalty from WHD; such requests must be made in writing.[52]

An examination of WHD enforcement data reveals that, since FY2007, the agency has concluded over 9,700 cases (representing more than 176,000 violations) in which employers violated FLSA child labor provisions.[53] Well-represented among these cases were full-service restaurants (1983 cases), and limited-service restaurants (1,530 cases) and eating places (173 cases). Together these

[47] 29 U.S.C. §212(b) and (d).

[48] These include the FLSA, the Family and Medical Leave Act, and the Migrant and Seasonal Agricultural Worker Protection Act, among others. See DOL, Wage and Hour Division, "Major Laws Administered/Enforced," http://www.dol.gov/whd/regs/statutes/summary.htm.

[49] 29 U.S.C. §216(e) and 29 C.F.R. pt. 579. Current civil money penalties amounts were established, by amendment to the FLSA, by the Genetic Information Nondiscrimination Act (P.L. 110-233).

[50] The term *serious injury* is defined at 29 U.S.C. §216(e)(1)(B) and refers to "the permanent loss or substantial impairment of one of the senses ... [or] of a bodily member, organ, or mental faculty" or "permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand, or other body part."

[51] 29 U.S.C. §216(e)(5).

[52] 29 U.S.C. §216(e)(4) and 29 C.F.R. §580.6.

[53] DOL, *Data: Enforcement*, June 15, 2016, http://ogesdw.dol.gov/homePage.php.

establishments represented more than 37% of concluded FLSA child labor cases. Overall, civil money penalties ranged from no penalty to $287,980.[54]

Injunctions and Criminal Penalties

U.S. district courts have jurisdiction to enjoin violations of the FLSA's child labor provisions.[55] For example, a federal court may order an employer to halt employment of a minor in a hazardous occupation or may enjoin a producer from shipping goods out of state from an establishment in or about which a child labor violation has occurred.

Criminal penalties are also prescribed for willful violations of the FLSA's child labor provisions. Any person who willfully violates these provisions will, upon conviction, be subject to a fine of not more than $10,000, imprisonment for not more than six months, or both.[56] Imprisonment, however, will be sentenced only if a violator has a prior conviction for willful violation of the child labor provisions.[57]

Courts' Consideration of FLSA Child Labor Provisions

Since the enactment of the FLSA, various courts have resolved cases involving the meaning and operation of the law's child labor provisions.

Application of Section 12(a): Shipment of Goods in Commerce

Many of the early cases brought under the child labor provisions considered whether they should apply when the movement of goods may not have occurred "in commerce" or when the items created by the employer were arguably not "goods" within the meaning of the provisions.[58] These early cases appear to have focused generally on the application of Section 12(a) of the FLSA. Subsection (c) was not added to Section 12 of the FLSA until 1949.[59] Thus, the courts in these early cases did not address the direct employment of minors but rather whether an employer was transporting goods that were produced by minors.

In a 1945 decision, *Western Union Telegraph v. Lenroot*, the U.S. Supreme Court considered whether Section 12(a) applied to a telegraph company that employed messengers who were under the age of 16.[60] Lenroot, who served as the DOL's chief of the Children's Bureau, maintained that Western Union violated Section 12(a) by shipping or delivering for shipment in commerce telegraphic messages that were produced in an establishment where oppressive child labor was employed.[61] Whether the messages were "goods" for purposes of Section 12(a) was one of the

[54] The largest penalty was applied to the main office of Western Wats Center, a call center in Utah. In total, WHD investigated and found FLSA child labor violations in five of the company's Utah locations, with total civil money penalties assessed in excess of $500,000. For additional information see DOL, "US Department of Labor Resolves Case with Orem, Utah-Based Company for $500,000 in Civil Money Penalties for Child Labor Violations," press release, March 29, 2010, https://www.dol.gov/opa/media/press/whd/WHD20100307.htm.

[55] 29 U.S.C. §217.

[56] 29 U.S.C. §216(a).

[57] Ibid.

[58] See, for example, Tobin v. Grant, 79 F.Supp. 975 (N. D. Cal. 1948).

[59] See Fair Labor Standards Amendments of 1949, §10(b), 63 Stat. 910, 917 (1949).

[60] Western Union Telegraph v. Lenroot, 323 U.S. 490 (1945).

[61] Ibid., at 501-502.

questions considered by the Court.[62] While the Court found that the messages "are clearly 'subjects of commerce' and hence ... are 'goods' under the [FLSA]," it nevertheless concluded that Western Union was not a producer of these goods.[63] The Court maintained that Western Union simply transmitted the messages and did not handle them in such a way as to make it a producer of goods.[64] The Court also concluded that Western Union did not "ship" the messages in such a way as to find a violation of Section 12(a). The Court observed: "We do not think that 'ship' in this Act applies to intangible messages, which we do not ordinarily speak of as being 'shipped.'"[65]

In *Tobin v. Grant*, another early decision from 1948, a federal district court in California considered the meaning of the phrase "ship or deliver for shipment in commerce" as it is used in Section 12(a).[66] The employer in *Tobin*, a manufacturer of books and book covers, employed 22 minors under the age of 16 in processing and manufacturing occupations. Tobin, who served as Secretary of Labor at the time, alleged a violation of Section 12(a) even when the majority of the employer's goods were not shipped interstate.[67] Although the employer knew that its customers would eventually ship the books and book covers for use outside of the state, it maintained that knowledge of the goods' ultimate destination was immaterial.[68]

The court concluded that the employer's delivery of goods, albeit primarily intrastate, was prohibited by Section 12(a).[69] Citing the FLSA's legislative history, the court observed:

> [T]he words "deliver for shipment in commerce" are sufficiently broad to cover a situation in which a manufacturer, knowing that the ultimate destination of his goods is in interstate commerce, sells to a concern which makes the actual shipment. If the Act did not cover such a transaction, manufacturers could violate the law with impunity by selling goods within the state of manufacture, regardless of the known interstate market.[70]

Application of Section 12(c): Direct Employment of Oppressive Child Labor

More recent cases have examined Section 12(c) of the FLSA and the direct employment of minors. For example, in *McLaughlin v. Stineco*, a 1988 decision, a federal district court in Florida found that a framing contractor violated Section 12(c) by employing minors under the age of 18 years in a hazardous occupation and by employing a minor under the age of 16 years during hours not permitted by DOL regulations.[71] The company employed a 17-year-old and a 15-year-old to perform roofing work, an occupation that the Secretary of Labor found to be hazardous.[72] Regulations promulgated by the Secretary defined all occupations in roofing operations to be hazardous for the employment of minors between 16 and 18.[73] Based on these regulations, the court further concluded that the employment of individuals between the ages of 14 and 16 years

[62] Ibid., at 502-503.

[63] Ibid.

[64] Ibid, .at 504.

[65] Ibid., at 506.

[66] 79 F.Supp. 975 (N. D. Cal. 1948).

[67] Ibid., at 976-77.

[68] Ibid.

[69] Ibid., at 977-78.

[70] Ibid.

[71] McLaughlin v. Stineco, 697 F.Supp. 436 (M. D. Fla. 1988).

[72] Ibid., at 453.

[73] Ibid.

was also prohibited.[74] Ultimately, the court found that the framing contractor violated Section 12(c).

In addition, the court also determined that the framing contractor violated DOL's child labor regulations by employing the 15-year-old for more than 40 hours per week.[75] The minor indicated that he worked for three to five weeks, arriving at work between 7:00 and 7:30 a.m., and quitting between 4:30 and 5:00 p.m., with a lunch break of 30 minutes to one hour.[76] Under the agency's regulations, a minor between the ages of 14 and 15 years may not work for more than 40 hours in any one week when school is not in session and not more than 18 hours in any one week when school is in session.[77]

In *Martin v. Funtime*, a 1991 decision, a federal district court in Ohio found that the operator of three amusement parks in Ohio and New York violated Section 12(c) by employing numerous 14- and 15-year-olds beyond the hours prescribed by the Secretary of Labor.[78] The minors were regularly employed for more than 40 hours per week when school was not in session and more than 18 hours per week when school was in session.[79] The minors were also employed before the start time identified in DOL's regulations and after the similarly prescribed end time.[80]

In enjoining the amusement park operator from further violations of Section 12(c), the court rejected the operator's argument that it was engaging in serious efforts to reduce the number of violations and that it was inherently difficult to monitor the hours of all of the minor employees.[81] The court maintained that the operator either knew about the violations or could have easily discovered them because they involved "an impermissible number of hours per week ... and were obvious from the defendant's own time records."[82]

In affirming the court's decision in *Funtime*, the U.S. Court of Appeals for the Sixth Circuit observed that an employer's responsibility for child labor violations "approaches strict liability."[83] The court noted, "[A]n employer cannot avoid liability by arguing that its supervisory personnel were not aware of the violation, or by simply adopting a policy against employing children in violation of the Act."

Recent DOL Court Filings

Although a review of recent FLSA cases produced few court decisions involving either Sections 12(c) or 12(a), it appears that the investigation of alleged child labor violations has continued steadily. In August 2015, for example, following a WHD investigation, DOL alleged violations of Section 12(c), as well as violations of the FLSA's minimum wage and overtime provisions, in a

[74] Ibid. ("Further, because the Secretary has determined that roofing operations are hazardous for the employment of individuals between sixteen and eighteen, employment of individuals between fourteen and sixteen in that occupation is also prohibited.")

[75] Ibid.

[76] Ibid., at 443.

[77] Ibid.. at 453 (citing 29 C.F.R. §570.35(a)(2), (a)(3)).

[78] Martin v. Funtime, 792 F.Supp. 539 (N. D. Ohio 1991), *aff'd*, 963 F.2d 110 (6th Cir. 1992).

[79] Ibid., at 2-3.

[80] Ibid.

[81] Ibid.

[82] Ibid., at 4.

[83] Martin v. Funtime, 963 F.2d 110, 115 (6th Cir. 1992).

case involving an Ohio restaurant.[84] In *Perez v. Cathedral Buffet, Inc.*, DOL is seeking $207,975 in back wages, as well as an equal amount in liquidated damages for the wage and hour violations.[85] The agency is also seeking to permanently enjoin future violations of the FLSA.[86]

In December 2015, DOL filed a similar complaint against an Oklahoma restaurant. In *Perez v. Moranto*, DOL is alleging violations of the FLSA's child labor, minimum wage, and overtime provisions.[87] With regard to the child labor allegations, DOL maintains that the restaurant employed minors between the ages of 10 and 17 to work as bussers and that minors under 16 years worked more than the number of hours permitted by DOL regulations and beyond the start and end times permitted by such regulations.[88] The agency also asserts that at least one minor operated hazardous equipment on a regular basis.[89]

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[84] Complaint, Perez v. Cathedral Buffet, Inc., No. 5:15-cv-1577 (N.D. Ohio August 10, 2015).

[85] Ibid. See also DOL, "U.S. Department of Labor Files Suit Alleging Restaurant Classified Some Employees as Volunteers," press release, August 21, 2015, https://www.dol.gov/opa/media/press/whd/WHD20151571.htm.

[86] Ibid.

[87] Complaint, Perez v. Moranto, No. CIV-15-1378-D (W.D. Okla. Decemder 23, 2015).

[88] Ibid., at 5.

[89] Ibid.