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Sargent Shriver National Center on Poverty Law

# CHILD LABOR IN AMERICA

## History's Horror, Today's Tragedy

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**T**oday the workplace is as much a part of American teen life as the high school prom. For Americans, the term “child labor” brings forth nostalgic recollection of a distant struggle and the self-satisfied perception that, at least here in the United States, we have abolished this ancient evil.<sup>1</sup> After all, the Fair Labor Standards Act, the main federal statute providing child labor protections, was enacted more than seventy years ago and we hear nothing about young workers. That perception, however, is simply wrong. Far from disappearing, child labor is very much alive in our country. Americans simply do not recognize the contemporary problems of child labor despite daily interaction with the teenage workforce.

In family law, child neglect is typically defined statutorily as “harm or threatened harm to a child’s health or welfare ... by placing a child at unreasonable risk or by failure ... to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.”<sup>2</sup> Such statutes are typically used by state welfare authorities against parents charged with neglect of their child. However, the same concept may be applied to societal neglect of working children in the United States. As I demonstrate here, both federal and state governments are guilty of neglect of adolescents who are at risk in the workplace. We have failed in our collective responsibility to these working youths, resulting in death, injury, and blighted futures.

Work by youths is not necessarily bad. Employment offers to adolescents potential benefits such as income, lessons about responsibility and finances, and transferable job skills. However, children’s work in the United States—particularly “high intensity” work, i.e., more than twenty hours per week—poses substantial immediate and long-term academic, safety, health, and economic risks for youth workers.<sup>3</sup> This scandalous situation results from lack of awareness of the basic facts about child labor, outdated

<sup>1</sup>The term “child labor” in this article describes paid employment in the United States by persons under 18, being the normal age of majority in the United States today. At various points the terms “youth workers” or “young workers” are used synonymously.

<sup>2</sup>MICH. COMP. LAWS ANN. § 722.622(f)(ii) (West 2002 & Supp. 2010).

<sup>3</sup>See NATIONAL RESEARCH COUNCIL INSTITUTE OF MEDICINE, PROTECTING YOUTH AT WORK 3–4 (1998) (defining “high intensity” work) [hereinafter PROTECTING YOUTH AT WORK].

laws, lack of enforcement of the existing inadequate laws, and the profits gained from child labor.

American youths constitute an immense pool of cheap and easily managed labor for employers. Employers prefer adolescent employees, who generally work for minimum or subminimum wage without health insurance or other fringe benefits, accept irregular work schedules, may not be unionized, and are easily replaced. Corporate marketing strategies target teens who then seek income to support their spending habits.<sup>4</sup> At the same time federal and state laws have not changed to deal with the reality of the growing numbers of American children employed and the changes in the jobs held by these youths. The economic drive for profits combined with legal paralysis has failed to protect American teens from the dangers inherent in the workplace.

### I. The Realities for Young Workers in America

Millions of youths work in United States. Many work long hours in physically dangerous situations and jeopardize their education and other social development. While the United States in many ways has advanced workers' rights and developed systems of protection, the reality is that American society has failed to recognize and tackle the devastating consequences that youth employment produces for young workers, their families, and society as a whole.

### A. Current State of Child Labor in the United States

The Child Labor Coalition estimates that 5.5 million youths 12 to 17 are in the workforce.<sup>5</sup> In fact, the United States has the highest percentage of working children of any developed nation, with many adolescents working long hours even during the school week. Modern American child labor is *not* about young teens babysitting or mowing lawns. In 2009 millions of 15- to 17-year-olds were employed with about 60 percent of them working in retail trades.<sup>6</sup> Approximately 80 percent of 16- and 17-year-olds worked in paid jobs at some point while attending high school.<sup>7</sup>

These estimates of youth workers, however, may be vastly underestimated. Over half the youths interviewed by the U.S. Department of Labor responded that they worked at the age of 14; over 60 percent worked at age 15.<sup>8</sup> Early employment is particularly prevalent in agriculture. The amount of time spent working is also significant. While school is in session, working 15-year-olds average twelve hours per week and 17-year-olds average nearly eighteen hours of paid work per week.<sup>9</sup> Moreover, employed teens tend to work more hours the longer they are employed—a pattern usually approved by parents.<sup>10</sup> Girls tend to work at an earlier age than boys, while boys average more hours of paid work.<sup>11</sup> White youths are nearly twice as likely as black and Hispanic youths to work during the school year, although working black and Hispanic

<sup>4</sup>In 2005 teenagers spent \$159 billion (Press Release, TRU, TRU Projects Teens Will Spend \$159 Billion in 2005 (Dec. 15, 2005), <http://bit.ly/mFmbO1>).

<sup>5</sup>Child Labor Coalition, Child Labor in the U.S.: Youth Employment Statistics, (n.d.), <http://bit.ly/jHLeZi>.

<sup>6</sup>See U.S. Department of Labor, Report on the Youth Labor Force 36 (2000), <http://1.usa.gov/iZx1QT> (reporting statistics on youth employment in retail and other trades); Centers for Disease Control and Prevention, Young Worker Safety and Health (May 25, 2011), <http://1.usa.gov/k6tGfk> (youth employment statistics).

<sup>7</sup>U.S. Department of Labor, *supra* note 6, at 75.

<sup>8</sup>*Id.* at 14–15.

<sup>9</sup>*Id.* at 34.

<sup>10</sup>Of sixth- through eighth-grade students 56 percent reported working an average of 7.7 hours per week (Nancy F. Weller, et al., *Work-Related Injury Among South Texas Middle School Students: Prevention and Patterns*, 96 SOUTHERN MEDICAL JOURNAL 1213–20 (2003)). By 17, youths average nearly eighteen hours of work per week (U.S. Department of Labor, *supra* note 6, at 34). See generally Sarah Phillips & Kent L. Sandstrom, *Parental Attitudes Toward Youth Work*, 22 YOUTH AND SOCIETY 160–83 (1990).

<sup>11</sup>U.S. Department of Labor, *supra* note 6, at 3, 17, 34.

teenagers average three to five more work hours per week.<sup>12</sup>

Youths generally seek paid work to gain autonomy from parents and other authority figures, to save money for educational or other purposes, and to assert themselves as “adultlike” in the eyes of parents, teachers, or peers. Youths also seek income that allows them to buy consumer products and to fund social activities.<sup>13</sup> In some cases the teens’ income is used to increase their family’s income, and this has become more common in the current economic downturn.

### B. The Impact of Child Labor on Educational and Social Development

Entering the workforce can foster future career opportunities for youths when there is adult supervision and the job teaches transferable skills. This is, unfortunately, not the typical experience of American teens. Currently most of the youth workforce is concentrated in entry-level, age-segregated jobs with few opportunities for meaningful interaction with adults, skill acquisition, or long-term employment.<sup>14</sup> Employers usually value adolescent workers only as cheap and controllable labor, particularly in the fast-food and sales sectors

where they disproportionately work the evening and weekend shifts.<sup>15</sup> This type of high-intensity work exacts a terrible toll on youths.<sup>16</sup>

Young workers in high-intensity jobs experience lower grades, higher truancy, and an increased dropout rate from school.<sup>17</sup> They spend less time on homework than their nonworking peers and are more likely to come to school fatigued and unprepared for learning.<sup>18</sup> High-intensity work interferes with positive adjustment and career development because it “is associated with unhealthy and problem behaviors”—such as delinquent behavior, substance abuse, and early sexual activity—that emerge when youths have less time for school, family, and other organized activities.<sup>19</sup> Weakened conventional social controls, diminished academic success, and increased behavioral issues lead youth workers into adulthood less prepared to succeed personally and economically.

### C. Physical Hazards for Youths on the Job

Adolescents also confront numerous physical hazards in the workplace. Youth workers suffer work-related fatalities and injuries at a rate consistently higher than the overall employee rate.<sup>20</sup> Accord-

<sup>12</sup>*Id.* at 17. About 30 percent of white children worked in 2001, compared to 14 percent of black children and 17 percent of Hispanic children (see U.S. GENERAL ACCOUNTING OFFICE, GAO-02-880, CHILD LABOR: LABOR CAN STRENGTHEN ITS EFFORTS TO PROTECT CHILDREN WHO WORK 14 (Sept. 2002), <http://1.usa.gov/l2Doyg> [hereinafter 2002 GAO REPORT]).

<sup>13</sup>ELLEN GREENBERGER & LAURENCE D. STEINBERG, WHEN TEENAGERS WORK: THE PSYCHOLOGICAL AND SOCIAL COSTS OF ADOLESCENT EMPLOYMENT 88–89 (1986).

<sup>14</sup>*Id.* at 50–53, 57.

<sup>15</sup>See PROTECTING YOUTH AT WORK, *supra* note 3, at 86 (employers’ views of youth workers).

<sup>16</sup>Jerald G. Bachman & John E. Schulenberg, *How Part-Time Work Intensity Relates to Drug Use, Problem Behavior, Time Use, and Satisfaction Among High School Seniors: Are These Consequences or Merely Correlates?* 29 DEVELOPMENTAL PSYCHOLOGY 220–35 (1993).

<sup>17</sup>J.C. Lee & J. Staff, *When Work Matters: The Varying Impact of Adolescent Work Intensity on High School Dropout*, 80 SOCIOLOGY OF EDUCATION 158–78 (2007); Herbert W. Marsh & S. Kleitman, *Consequences of Employment During High School: Character Building, Subversion of Academic Goals, or a Threshold?* 42 AMERICAN EDUCATIONAL RESEARCH JOURNAL 331–69 (2005); see also J. Robert Warren & Jennifer C. Lee, *The Impact of Adolescent Employment on High School Dropout: Differences by Individual and Labor-Market Characteristics*, 32 SOCIAL SCIENCE RESEARCH 98–128 (2003).

<sup>18</sup>Deborah Safran et al., *Part-Time Work and Hurried Adolescence: The Links Among Work Intensity, Social Activities, Health Behaviors, and Substance Use*, 42 JOURNAL OF HEALTH AND SOCIAL BEHAVIOR 425–49 (2001).

<sup>19</sup>PROTECTING YOUTH AT WORK, *supra* note 3, at 3. On issues of work and adolescent behavioral problems see Robert Bozick, *Precocious Behaviors in Early Adolescence: Employment and the Transition to First Sexual Intercourse*, 26 JOURNAL OF EARLY ADOLESCENCE 60–86 (2006); Barbara McMorris & Christopher Uggen, *Alcohol and Employment in the Transition to Adulthood*, 41 JOURNAL OF HEALTH AND SOCIAL BEHAVIOR 276–94 (2000); L.D. Steinberg & E. Cauffman, *The Impact of Employment on Adolescent Development*, 11 ANNALS OF CHILD DEVELOPMENT 131–66 (1995).

<sup>20</sup>C.R. Estes et al., *Occupational Injuries and Deaths Among Younger Workers—United States, 1998–2007*, 59 MORBIDITY AND MORTALITY WEEKLY REPORT 449–51 (2010), <http://1.usa.gov/l5sEpE>.

ing to the Labor Department, eighty-two youth workers through the age of 19 died in 2009 as the result of occupational injuries.<sup>21</sup> More recently in July 2010 two teenage employees (14- and 19-years old) of an Illinois grain co-op company died when they became trapped in a grain bin in which a sinkhole had developed amidst the corn, consuming them as if in quicksand.<sup>22</sup> Then in December 2010 a 16-year-old working on an Ohio farm was killed in an accident involving a manure spreader in which his outer clothing was caught.<sup>23</sup> Teenagers also risk severe injury in their work. Estimates range up to more than 200,000 adolescent workers suffering job-related injuries and illnesses each year—a staggering number.<sup>24</sup> For instance, an Iowa 15-year-old recently had his left hand severed at the wrist by a fiber processing machine while working at an industrial quilting company.<sup>25</sup>

Youth workers face the same workplace dangers as their adult counterparts but are far less able to deal with these risks. Teens are “congregated in jobs that are characterized by the absence of opportunities for significant promotion,” low pay, high turnover, little on-the-job training,

wide variation in hours, and few benefits.<sup>26</sup> Jobs with these characteristics are, in general, more dangerous than other jobs.<sup>27</sup> Moreover, juvenile employees are not legally required to receive safety training. As a result, instances of youth worker deaths and injuries are extraordinarily high and likely to be underreported. The workplace ranks only behind motor vehicle accidents, violence, and recreation as the most common cause of harm to American youths 10 to 19.<sup>28</sup> Thousands of children work in sweatshops and the “underground” economy, where undocumented workers toil under ruthlessly exploitative conditions.

Hundreds of thousands of agricultural youth workers are particularly vulnerable.<sup>29</sup> The Fair Labor Standards Act provides dramatically less protection to youths employed in agriculture than those working in all other economic sectors.<sup>30</sup> Child farmworkers engage in more hazardous work, for longer hours, and without maximum hours’ restrictions.<sup>31</sup> They work before and after school, perform arduous physical labor, and risk illness, exposure to pesticides, serious injury, and permanent disability.<sup>32</sup> No less

<sup>21</sup>U.S. Department of Labor, Bureau of Labor Statistics, Table A-8: Fatal Occupational Injuries by Event or Exposure and Age, All United States, 2009 (n.d.), <http://1.usa.gov/kjFPIT>.

<sup>22</sup>Tara Becker, *Grain Company Fined \$618,125 in Bin Fatalities*, DAILY GAZETTE (Sterling, Ill.), Jan. 25, 2011, <http://bit.ly/m2QHO7>.

<sup>23</sup>Steve Bennish, *Teen Who Died in Darke County Farm Accident Identified*, DAYTON DAILY NEWS (Dec. 30, 2010, 7:37 AM), <http://bit.ly/iJlvxH>. Might such an accident spark the political will to enhance the regulation of child labor in agriculture, an area where regulation historically has been minimal at best?

<sup>24</sup>NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (NIOSH) RECOMMENDATIONS TO THE U.S. DEPARTMENT OF LABOR FOR CHANGES TO HAZARDOUS ORDERS 7 (May 3, 2002), <http://1.usa.gov/mEy2zr>. Work-related illness data are even more difficult to document than injuries because of the long latency period often associated with these pathologies.

<sup>25</sup>E-mail from Gail Sheridan-Lucht, Attorney, Iowa Workforce Development, to Candace Kilpinen, Research Assistant, Valparaiso University School of Law (Jan. 7, 2011, 5:06PM) (in my files).

<sup>26</sup>PROTECTING YOUTH AT WORK, *supra* note 3, at 86.

<sup>27</sup>*Id.* at 72–74.

<sup>28</sup>*Work-Related Injuries and Illnesses Associated with Child Labor—United States, 1993*, 45 MORBIDITY AND MORTALITY WEEKLY REPORT 464–68 (June 7, 1996), <http://1.usa.gov/kcSKaU>; D. Laraque et al., *Prevention of Youth Injuries*, 91 JOURNAL OF THE NATIONAL MEDICAL ASSOCIATION 557–71 (1999).

<sup>29</sup>Celeste Corlett, *Impact of the 2000 Child Labor Treaty on United States Child Laborers*, 19 ARIZONA JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW 713 (2002) (approximately 800,000 to 1.5 million children from age of 5 to 15 work in harsh conditions in the United States’ agriculture industry).

<sup>30</sup>Fair Labor Standards Act of 1938, ch. 675, 52 Stat. 1060. Section 13(a)(6) of the original Act flatly exempted “any employee engaged in agriculture.”

<sup>31</sup>Fair Labor Standards Act, 29 U.S.C. § 213(c)(1). See generally LEE TUCKER, HUMAN RIGHTS WATCH, FINGERS TO THE BONE: UNITED STATES FAILURE TO PROTECT CHILD FARMWORKERS (2000), <http://bit.ly/jaGjJz>.

<sup>32</sup>TUCKER, *supra* note 31, at 2, 48.

than 41 percent of youth-related deaths occur in agriculture, and a staggering 20 percent are child farmworkers 13 years of age or younger.<sup>33</sup>

The reasons for these high workplace mortality and injury statistics are clear: (1) dangerous working conditions; (2) lack of adult supervision; (3) little threat of legal liability for employees using child labor; and (4) poor judgment by teens. Work-related deaths and injuries are often related to the incomplete mental and emotional development of adolescents. The prefrontal cortex of the brain develops last and typically not until an individual's mid-20s. This part of the brain regulates executive functions, emotions, impulse control, complex reasoning, and other skills. Incomplete neuromaturation thus explains why adolescent decisions often reflect immaturity of thought or action.<sup>34</sup> Not surprisingly adolescents, particularly males, exhibit the highest rates of occupational injuries precisely because they lack adult decision-making skills.<sup>35</sup>

Sexual harassment on the job is a major problem that goes substantially unreported by young workers.<sup>36</sup> A particularly dangerous environment is in restaurants, movie theaters, and retail stores, where the business atmosphere furthered by the employer is deliberately social.<sup>37</sup> Young workers, particularly teenage girls, are especially susceptible to sexual harassment because of their developmental stage, the part-time or temporary nature of their employment, the power imbalances in the work envi-

ronment, and lack of knowledge about their rights. They work in environments where supervisors and coworkers are often predatory older males. Teens often appear to be adults physically, yet have not reached developmental maturity. They lack coping mechanisms, emotional maturity, and the life experience necessary to weigh likely consequences.<sup>38</sup> As employees, adolescents lack the bargaining power to protect themselves sexually from overreaching adults. The harasser's position of authority and the hierarchy of the workplace understandably foster the belief that supervisors have absolute authority and that objections would not stop the harassment.

## II. Inadequate Legal Protections for Youth Workers

The abuse and exploitation of child workers had been prevalent throughout American history and widely publicized in the early twentieth century. Since the 1930s, both federal and state governments have taken action to protect child workers from harm and ensure greater access to educational opportunities. However, the legislative processes resulted in the promulgation of laws and regulations that were incomplete and did not protect all youth workers equally. Moreover, federal and state agencies receive insufficient resources to enforce even the incomplete protective laws they are charged to administer. Enforcement of current child labor laws is exacerbated further by labor and school attendance

<sup>33</sup>2002 GAO REPORT, *supra* note 12, at 23; Janice Windau et al., *Profile of Work Injuries Incurred by Young Workers*, MONTHLY LABOR REVIEW, June 1999, at 3, 5.

<sup>34</sup>See generally *Inside the Teenage Brain: Anatomy of a Teen Brain*, FRONTLINE (n.d.), <http://to.pbs.org/kt5HcB>.

<sup>35</sup>See F.C. Bresline & R. Smith, *Age-Related Differences in Work Injuries: A Multi-Variate Population Based Study*, 48 AMERICAN JOURNAL OF INDUSTRIAL MEDICINE 50–56 (2005) (comparing factors related to teen occupational injury rates).

<sup>36</sup>See James E. Gruber & Susan Fineran, *The Impact of Bullying and Sexual Harassment on Middle School and High School Girls*, 13 VIOLENCE AGAINST WORKERS 627, 637 (2007) (almost 47 percent of employed high school girls in a study experienced sexual harassment on the job).

<sup>37</sup>See my *Save the Children: The Legal Abandonment of American Youth in the Workplace*, 43 AKRON LAW REVIEW 107, 128–29 (2010); see also Dina Berta, *EEOC: Industry Sued Most in Claims of Teen Harassment*, BNET (Feb. 5, 2007), <http://bit.ly/iCvSIY> (over half of Equal Employment Opportunity Commission harassment complaints are against restaurants, which employ twelve million workers under 25 and several million 15- to 19-year-olds). Between 1999 and 2007, restaurants paid more than \$7.3 million in teenage sexual harassment settlements with some individual awards in the hundreds of thousands of dollars (*id.*).

<sup>38</sup>See generally HANDBOOK OF ADOLESCENT PSYCHOLOGY (Vincent Van Hasselt & Michael Hersen eds., 1987); Gary B. Melton, *Developmental Psychology and the Law: The State of the Art*, 22 JOURNAL FAMILY LAW 445, 465–66 (1984); Elizabeth S. Scott, *Judgment and Reasoning in Adolescent Decision Making*, 37 VILLANOVA LAW REVIEW 1607 (1992).

laws that grant minors extraordinary power to decide for themselves whether to work and whether to drop out of school. As a result, contemporary youth workers are inadequately protected from abuses comparable in consequence to, even if different in form from, those of the sweatshops of the past.

#### A. Federal Law: The Fair Labor Standards Act and Its Deficiencies

Federal child labor law began in 1938 with the enactment of the Fair Labor Standards Act and remains substantially unchanged today, despite numerous amendments.<sup>39</sup> The Act prohibits employers from shipping, in interstate commerce, goods manufactured by “oppressive child labor.”<sup>40</sup> The statute and Labor Department regulations define oppressive child labor based on such factors as age, industry, and nature of the job.<sup>41</sup> However, federal child labor law is inadequate for protecting teens for many reasons. First, except for the prohibition of work in hazardous occupations, the Act does not require that youths obtain work permits or parental or school approval to be employed.<sup>42</sup> Second, the Act does not restrict the hours or time of work of 16-year-old or older adolescents. While the Act limits youths under 16 to work only during nonschool hours before 7:00 a.m. or after 7:00 p.m. and totaling no

more than three hours per day and eighteen hours per week, these restrictions are not universal.<sup>43</sup> Moreover, the Act explicitly excludes from even its modest restrictions almost all work by youth farmworkers, all activities in an “enterprise” with less than \$500,000 per year in operations, or operations that do not affect interstate commerce.<sup>44</sup>

Third, the Labor Department’s Wage and Hour Division retains exclusive enforcement authority for federal child labor violations. Neither child workers nor their parents may sue to enforce the Fair Labor Standards Act—a shocking aberration since private enforcement is available under other civil rights and Fair Labor Standards Act provisions.<sup>45</sup> Administrative penalties for child labor violations as enforced by the Wage and Hour Division are woefully insufficient, despite having been increased in 2008.<sup>46</sup> Employer violations of child labor provisions of the Act are also criminal behavior, but the division has not prosecuted anyone in the seventy-three years since the Act was adopted.<sup>47</sup>

Moreover, the Wage and Hour Division has not adequately used its enforcement authority to inspect workplaces employing youth and to prosecute child labor violations through administrative or judicial proceedings. Between 1997 and 2007 the division’s enforcement action

<sup>39</sup>Fair Labor Standards Act, 29 U.S.C. §§ 201–204, 206–219 (2008).

<sup>40</sup>*Id.* § 212(a), (c); 29 C.F.R. § 570.114.

<sup>41</sup>See 29 U.S.C. § 203(l) (defining “oppressive child labor” as the employment of youths under 18 in mining, manufacturing, or “any occupation which the Secretary of Labor shall ... declare to be *particularly* hazardous” or detrimental to the health or well-being of children). In agriculture this definition applies to children only until they reach the age of 16 rather than 18 (29 U.S.C. § 213(c)(2); 29 C.F.R. § 570.2(a)(1)(i)).

<sup>42</sup>See 29 U.S.C. § 203(l) (describing hazardous occupations as oppressive child labor).

<sup>43</sup>See 29 C.F.R. § 570.35 (2009) (delineating hours’ limitations on child workers).

<sup>44</sup>29 U.S.C. §§ 203(s)(1)(A), 213(a)(6)(D).

<sup>45</sup>Compare *id.* §§ 215(a)(6), 216, 217, and *Henderson v. Bear*, 968 P.2d 144, 147 (Colo. Ct. App. 1998) (refusing to infer private civil remedy for violation of child labor provisions of Fair Labor Standards Act in suit by parents of a 15-year-old male electrocuted while working), with Civil Rights Act of 1964, 42 U.S.C. § 2000e-5; Age Discrimination in Employment Act, 29 U.S.C. § 626(b); Americans with Disabilities Act, 42 U.S.C. § 1201; Equal Pay Act, 29 U.S.C. § 206(d); Fair Labor Standards Act, 29 U.S.C. § 206(b) (minimum-wage provision).

<sup>46</sup>See 29 U.S.C. § 216(e)(1)(A) (setting civil money penalties for child labor provisions at \$11,000 with a \$50,000 penalty for a violation resulting in death or serious injury that may be doubled if the violation is willful).

<sup>47</sup>*Id.* § 216(a) (2006). A Westlaw terms-and-connectors search (on April 4, 2011) of all federal cases using the terms “(29 /3 216(a))” and “child labor” retrieved only twelve cases, none of which dealt specifically with the criminal prosecution of child labor violations.

decreased by one-third. The division seems blind to the problem.<sup>48</sup> For its 2008 fiscal year, the division reported that only 4,734 minors were illegally employed across the entire country, with 1,617 minors doing jobs in violation of hazardous occupation orders.<sup>49</sup>

A 2008 nongovernment study published by the *American Journal of Public Health* shows, however, that child labor violations remain at unconscionable levels.<sup>50</sup> More than one in three youths report working without a required permit.<sup>51</sup> More than half of youth workers work in violation of one Labor Department hazardous occupation order, with 22.1 percent reporting violation of two orders and 22.9 percent reporting three or more violations.<sup>52</sup> By assuming a very low estimate of 2.4 million 16- and 17-year-old workers, the study concluded “that as many as 264,000 of these youths may be employed in violation of [the Fair Labor Standards Act’s] night work provisions and as many as 888,000 may be employed in violation of hazardous occupation orders each year.”<sup>53</sup> That is about 549 times the number of youth hazardous occupation order violations reported by the Wage and Hour Division. Appointed

by President Obama, Labor Secretary Hilda Solis indicated that worker protection would now be a higher priority in the Labor Department.<sup>54</sup> Solis stated that 150 new Wage and Hour Division investigators would be hired to enforce wage rules and child labor laws.<sup>55</sup> Even with these new investigators, however, the division’s force would still be below mid-1990 levels, and current and future federal spending cuts make real enforcement more elusive than ever.<sup>56</sup> As even more adolescents enter the workplace, the negative consequences will multiply.

## B. State Child Labor Provisions and Limitations

The Fair Labor Standards Act is explicitly not preemptive.<sup>57</sup> State laws may mandate child labor protections and remedies—such as work permit requirements, maximum weekly hour limits for youth workers, regulation of 16- and 17-year-old workers in nonhazardous occupations, criminal and civil liability for violation of state law, and worker’s compensation benefits—that the Act does not take up. But states have also abandoned child workers. Only twenty-five states limit children under 16 to three hours of work per day during the school year.<sup>58</sup>

<sup>48</sup>Is DOL Effectively Enforcing Our Wage and Hour Laws?: Hearing Before the H. Comm. on Educ. & Labor, 110th Cong. 7 (2008) (statement of Anne-Marie Lasowski, Acting Director, Government Accountability Office, Education, Workforce and Income Security Issues), <http://1.usa.gov/lqTdz8>.

<sup>49</sup>Wage and Hour Division, U.S. Department of Labor, 2008 Statistics Fact Sheet: Wage and Hour Collects over \$1.4 Billion in Back Wages for over 2 Million Employees Since Fiscal Year 2001 5 (Dec. 2008), <http://1.usa.gov/iR6z6Y>, <http://1.usa.gov/iTK3P>.

<sup>50</sup>K. Raucher et al., *U.S. Child Labor Violations in the Retail and Service Industries: Findings from a National Survey of Working Adolescents*, 98 AMERICAN JOURNAL OF PUBLIC HEALTH 1693, 1697 (2008).

<sup>51</sup>*Id.*

<sup>52</sup>*Id.* at 1696.

<sup>53</sup>*Id.* at 1697.

<sup>54</sup>Melanie Trotman, *Labor Department to Tighten Scrutiny*, WALL STREET JOURNAL, Aug. 19, 2009, at A3.

<sup>55</sup>*Id.*

<sup>56</sup>*Child Labor in the U.S.: Will More Investigators Make a Difference?*, RYAN BLITSTEIN.COM, (June 26, 2009, 9:36pm), <http://bit.ly/jJLIOW>.

<sup>57</sup>The Fair Labor Standards Act expressly allows for greater protection of child workers by state law (29 U.S.C. § 218(a)).

<sup>58</sup>ALA. CODE § 25-8-36(a) (LexisNexis 2007); ARIZ. REV. STAT. ANN. § 23-233(A)(4) (1995); CAL. LAB. CODE § 1391(a)(2) (2003); FLA. STAT. ANN. § 450.081(1)(a) (2002 & Supp. 2011); HAW. REV. STAT. § 390-2(c)(7) (Supp. 2009); IND. CODE ANN. § 20-33-3-22(2)(A) (West 2008); IOWA CODE ANN. § 92.17(5) (West 2010); LA. REV. STAT. ANN. § 23:214 (2010); ME. REV. STAT. ANN. tit. 26, § 774(2)(D) (2007 & Supp. 2010); MO. ANN. STAT. § 294.030(1) (West 2005); MONT. CODE ANN. § 41-2-115(b)(i) (2009); N.H. REV. STAT. ANN. § 276-A:4(IV) (2008); N.J. STAT. ANN. § 34:2-21.3 (West 2000); N.M. STAT. ANN. § 50-6-3(B)(4) (LexisNexis Supp. 2010); N.Y. LABOR LAWS § 142(1)(a) (McKinney 2009); N.C. GEN. STAT. § 95-25.5(c)(1) (2009); N.D. CENT. CODE § 34-07-15 (2004 & Supp. 2009); OHIO REV. CODE ANN. § 4109.07(A)(4) (West 2007); OKLA. STAT. tit.40, § 75(A)(1) (2001); OR. ADMIN. R. § 839-021-0070(1) (e) (2010); S.C. CODE ANN. REGS. 71-3106(b)(5) (1991 & Supp. 2010); TENN. CODE ANN. § 50-5-104 (2008); VT. STAT. ANN. tit. 21, § 434 (2009); 16 VA. ADMIN. CODE §15-40-30 (1991); W. VA. CODE ANN. § 21-6-7(a)(3) (LexisNexis 2008).

Maine is even considering legislation to increase its maximum hour limit to four hours per day while also legalizing subminimum wage for youth workers.<sup>59</sup> Forty-four states allow children 16 and 17 to work forty or more hours during weeks while school is in session.<sup>60</sup> And thirty states do not even require work or age permits for youths 16 or 17.<sup>61</sup>

Administration of these weak state child labor laws is generally poor. A 2004 survey by the Child Labor Coalition found that, in thirty-two responding states, only 360 inspectors—an average of 11 per state—were responsible for enforcing *all* state labor laws, child labor laws among them.<sup>62</sup> Among these thirty-two states, only 19 inspectors were responsible for investigating child labor violations exclusively. Only two states had 25 or more compliance officers, while four states had no compliance officers. The general effectiveness of inspections may be assessed by comparison to the total number of work sites. Oregon had 13 inspectors for all state labor laws in 2004 and over 100,000 non-farm-working establishments.<sup>63</sup> To reach all the work sites, each inspector would need to visit approximately 7,700 work sites per year, or about 150 per week. Oregon inspectors in 2004, however, conducted only 27 total inspections.<sup>64</sup>

An additional glaring weakness of state law concerns liability for injuries on the job. Worker's compensation systems grant employers immunity from tort ac-

tions in exchange for limited compensation for injuries that arise out of and in the course of employment.<sup>65</sup> Under exclusive remedy provisions, employees—not excluding youth workers—receive fixed levels of compensation.<sup>66</sup> Yet the benefits received by injured employees are typically based on a fraction of the employee's average weekly wage during the year preceding the date of the injury.<sup>67</sup> Injured employees without a spouse or dependents typically receive only minimal compensation.<sup>68</sup> Minors' earnings and average weekly wages are likely to be low, and minors usually lack spouses and dependents, decreasing benefits further. Clearly, state child labor laws, like federal laws, fail to protect youth workers adequately.

### C. The Exceptional and Extraordinary Power of Juveniles to Make Decisions About Work and School

Yet another structural legal feature compounds federal and state law weaknesses. The Fair Labor Standards Act and state child labor law and school attendance law provide adolescents unprecedented decision-making powers—an anomaly in American law. Generally Anglo-American law presumes that minors are incompetent to make major life decisions; parents make these choices for their children. As the U.S. Supreme Court notes, “immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range conse-

<sup>59</sup>Legislative Document 1346, 1125th Leg., 1st Sess. (Me. 2011).

<sup>60</sup>Wage and Hour Division, U.S. Department of Labor, Selected State Child Labor Standards Affecting Minors Under 18 in Non-Farm Employment as of January 1, 2011 (Dec. 2010), <http://1.usa.gov/KYQW8n>.

<sup>61</sup>Wage and Hour Division, U.S. Department of Labor, Employment/Age Certificate (Jan. 1, 2011), <http://1.usa.gov/kEPR9z>.

<sup>62</sup>Child Labor Coalition, 2004 Child Labor State Survey, (n.d.), <http://bit.ly/iZrixN>.

<sup>63</sup>Fedstats, MapStats (n.d.), <http://1.usa.gov/igcARK>.

<sup>64</sup>Child Labor Coalition, *supra* note 62.

<sup>65</sup>ARTHUR LARSON & LEX LARSON, *WORKERS' COMPENSATION LAW* § 66.02 (2004).

<sup>66</sup>*Id.*

<sup>67</sup>See, e.g., Illinois Workers' Compensation Commission, FY2007 Annual Report 17 (n.d.), <http://bit.ly/ksaeTo>. A Lexis search using terms and connectors “minor employee” in the “Federal & State Workers' Compensation Cases” database disclosed only twenty-three cases brought to appeal Worker's Compensation claims between April 2001 and March 2011.

<sup>68</sup>Arthur J. Amchan, *Callous Disregard for Employee Safety: The Exclusivity of the Workers' Compensation Remedy Against Employers*, 34 LABOR LAW JOURNAL 683–84 (1983).

quences.”<sup>69</sup> As a result, many risky activities in adolescent daily life are restricted by law or placed directly under parental control. For example, most states enforce graduated drivers' license requirements for minors and require a parent or custodian to sign the license application as a sponsor.<sup>70</sup> Consumption of alcohol and tobacco is regulated through minimum age laws.<sup>71</sup> Contract law allows minors to disaffirm contractual obligations simply based on minority status, and health care providers generally must obtain parental consent to medical treatment.<sup>72</sup>

By contrast, child labor law and school attendance law ignore the functional disability of adolescents to make major life decisions and grant extraordinary decision-making powers to adolescents. This is a tragic misapplication of “children's rights,” with disastrous consequences. As a matter of federal law, for example, no parental consent, or even notice to parents, is required before a child may lawfully work. State child labor laws similarly authorize youths to choose to work. While some jurisdictions require parental consent for children under 16 to work, only sixteen states mandate consent for 16- and 17-year-olds to work, three of which mandate consent only during school hours.<sup>73</sup> Forty-three states allow

16- and 17-year old kids to work forty or more hours during weeks when school is in session.<sup>74</sup>

The unique decision-making power granted to adolescents regarding work is mirrored in education law as well. As of 2008, twenty states permitted children to leave school at 16. Of those, fifteen did not require the minor to obtain parental, guardian, or school permission to discontinue schooling.<sup>75</sup> Eight states allowed children to withdraw from school at 17; seven of these did not require adult participation in that decision.<sup>76</sup> Seventeen states allow a minor to withdraw from school without parental permission before the law allows these minors full driving privilege.<sup>77</sup>

The upshot is that teens in many instances may choose if, when, and where to work and whether to attend school at ages when they would not independently be allowed to apply for a learner's permit to drive and could not legally buy a bottle of beer or a pack of cigarettes. Such teenage autonomy in employment and education, combined with inadequate federal and state child labor laws, puts young workers at risk for lifelong negative consequences.

<sup>69</sup>*Bellotti v. Baird*, 443 U.S. 622, 640 (1979). The same basic theme is reflected in decisions regarding schools, which act in a *parens patriae* role (see, e.g., *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988) (allowing school to prohibit publication of some student speech in school newspaper)).

<sup>70</sup>E.g., in Colorado every applicant under 18 must submit an “Affidavit of Liability and Guardianship” signed by a parent, stepparent, guardian, or grandparent with power of attorney (Division of Motor Vehicles, Colorado Department of Revenue, Teen Drivers (n.d.), <http://1.usa.gov/jwOjKf>). Delaware, Georgia, Maryland, and Tennessee have similar requirements.

<sup>71</sup>See Ken Sternberg, *Alcohol Consumer Must Be 21 Years Old in All States: Concerns Remain About Drunk Driving*, 260 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 2479, 2479 (1988) (all states have raised their minimum drinking age to 21); see also National Highway System Designation Act of 1995, 23 U.S.C. § 161(a)(3) (providing that states will lose federal highway funds if they do not enact legislation that “considers an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the state to be driving intoxicated or under the influence of alcohol”). Adolescents may not vote until they are 18 (U.S. CONST. amend. XXVI). And many cities enforce youth curfews (Harvard Law Review Association, *Juvenile Curfews and the Major Confusion over Minor Rights*, 118 HARVARD LAW REVIEW 2400–2404 (2005) (describing modern juvenile curfew laws and their history)).

<sup>72</sup>See Juanda Lowder Daniel, *Virtually Mature: Examining the Policy of Minors' Incapacity to Contract Through the Cyberscope*, 43 GONZAGA LAW REVIEW 239, 241 (2008); Susan D. Hawkins, Note, *Protecting the Rights and Interests of Competent Minors in Litigated Medical Treatment Disputes*, 64 FORDHAM LAW REVIEW 2075 (1990).

<sup>73</sup>Wage and Hour Division, *supra* note 61.

<sup>74</sup>Wage and Hour Division, *supra* note 60. The seven states not allowing 16- and 17-year-olds to work more than forty hours a week during school are Connecticut, Colorado, Florida, Indiana, Kentucky, New Hampshire, and New Jersey (*id.*).

<sup>75</sup>See *my Save the Children*, *supra* note 37, at 158–61.

<sup>76</sup>*Id.*

<sup>77</sup>*Id.*

### III. Child Labor: A Guide for Practicing Lawyers

The negative consequences of contemporary child labor in the United States remain ignored by the public, the bar, and the courts.<sup>78</sup> Lawyers, however, can make a difference in the lives of young workers in three ways. First, lawyers can educate themselves and others about the realities of contemporary American child labor. Second, lawyers can use their skills on behalf of individual children victimized in their employment. And, third, lawyers can help educate the community about this issue.

Lawyers must stay current on issues and trends in child labor law. Federal child labor law changes, albeit slowly, through both legislative and administrative processes. Most recently, in 2008 Congress amended the Fair Labor Standards Act to increase civil money penalties for child labor violations.<sup>79</sup> Legislators have introduced in both the House and Senate other bills that would eliminate the different treatment of agricultural and nonagricultural work by minors; mandate Labor Department compilation of youth workplace injury and death data; revoke future federal funding for repeat violators; and increase criminal sanctions against employers violating child labor laws.<sup>80</sup> These

statutes, if enacted, would significantly decrease the risks and harmful effects of contemporary American youth employment.

Beyond statutory change, administrative enforcement is critically needed but is typically almost nonexistent. In 2010 the Wage and Hour Division promulgated a new child labor rule that strengthened hazardous occupation regulations on behalf of youth workers.<sup>81</sup> The new rule reflected some of the recommendations made in 2002 by the National Institute for Occupational Safety and Health and endorsed by youth worker advocates as necessary to improve working conditions for youth workers.<sup>82</sup> It took the Wage and Hour Division eight years to make even these limited improvements, and it still did not meet the needs of youths working in agricultural jobs.

Lawyers should also monitor federal child inspection and enforcement efforts, which often change with the political winds in Washington, D.C., but remain sparse and ineffective.<sup>83</sup> In fact, the current political climate is likely to result in decreased funding affecting many federal agencies such as the Labor Department and the Wage and Hour Division.<sup>84</sup> Regardless of political developments, however, enforcement data, administra-

<sup>78</sup>Few state legislative initiatives and few cases are brought to take up child labor issues.

<sup>79</sup>Genetic Information Discrimination Act of 2008, Pub. L. No. 110-233, § 302, 122 Stat. 881 (codified as amended at 29 U.S.C. § 216(e)).

<sup>80</sup>In 2009 legislators introduced in Congress the seventh bill since 1998 to protect teen agricultural workers—the Children's Act for Responsible Employment, H.R. 3564, 111th Cong. (2009). Attempts to mandate data compilation of youth occupational deaths and injuries were, among others, the Youth Workers' Protection Act, H.R. 2870, 109th Cong. (2005), and Youth Worker Protection Act, H.R. 3139, 108th Cong. (2003). Between 1990 and 2001, eight congressional bills proposed federal funding penalties for repeat child labor violators (e.g., Young American Workers' Bill of Rights, H.R. 961, 107th Cong. (2001)). The Child Labor Safety Act sought to increase criminal penalties (Child Labor Safety Act, H.R. 6861, 110th Cong. (2008)).

<sup>81</sup>Child Labor Regulations, Orders and Statements of Interpretation, 75 Fed. Reg. 28404 (May 20, 2010) (to be codified at 29 C.F.R. pts. 570, 579); see also Child Labor Regulations, Orders and Statements of Interpretation, 72 Fed. Reg. 19337 (proposed April 17, 2007) (to be codified at 29 C.F.R. 570) (proposing what became the final rule after notice-and-comment rulemaking); Child Labor Regulations, Orders and Statements of Interpretation, 72 Fed. Reg. 19328 (April 17, 2007) (seeking additional comments on child labor issues without proposing a rule).

<sup>82</sup>NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, *supra* note 24.

<sup>83</sup>See *supra* notes 44–55 and accompanying text (discussing federal child labor enforcement efforts).

<sup>84</sup>See Lisa Rein, *Budget 2012: Labor Department*, WASHINGTON POST (Feb. 14, 2011, 4:52 PM ET), <http://wapo.st/114Lhx> (comparing President Obama's proposed 2012 budget decreasing Labor Department's budget by 5 percent from 2010 and the Republicans' recently proposed 2012 budget decreasing Labor Department's budget by 23 percent). Neither President Obama's nor the Republicans' plan's primary budget reductions target child labor enforcement with President Obama's proposal actually increasing funding in general for worker safety and enforcement of labor violations (Roy Maurer, *DOL's Budget Blueprint Would Shave \$40 Billion*, SOCIETY FOR HUMAN RESOURCE MANAGEMENT (Feb. 17, 2011) (for online access, google [Roy Maurer DOL's Budget Blueprint])).

tive adjudications, and Labor Department policy developments offer insight into current child labor trends. For instance, there are fewer than one thousand federal wage- and -hour compliance officers to enforce federal labor laws despite the recent addition of investigators by the secretary of labor.<sup>85</sup> The Labor Department sometimes targets specific industries for intensive enforcement. Under the Obama administration, the Labor Department focused on blueberry farmers who hire children, but restaurants and fast-food establishments are also frequent violators of laws.<sup>86</sup> Movie theaters have also recently been found to be egregious lawbreakers.<sup>87</sup> Internet searches of news sources, the Labor Department's Wage and Hour Division website, or online newsletters related to child labor can easily keep lawyers informed about such trends at the federal level.<sup>88</sup>

State child labor laws sometimes, although rarely, change. Lawyers need to understand the child labor liability and enforcement laws of their own states.<sup>89</sup>

Dramatic child labor violations can thrust the plight of youth workers into the public spotlight. For example, in 2009 the Iowa General Assembly reacted to highly publicized child labor violations at the Agriprocessor meat packing plant in Postville, Iowa, and amended its child labor statutes.<sup>90</sup> The Iowa statutes now contain stiffer criminal penalties for child labor violations, a negligence *mens rea* requirement to establish criminal liability, and greater enforcement mechanisms through increased civil penalties and clearer judicial review standards.<sup>91</sup> The child labor violations of one employer initiated a shift in Iowa's child labor policies, statutes, and administrative regulations—a first step. That step in Iowa, however, has not made a big difference because the state labor agency could afford to hire only one new labor inspector, Iowa's first dedicated solely to child labor investigations.<sup>92</sup> Similarly other states do not support state agencies with the resources necessary to enforce the law.<sup>93</sup>

<sup>85</sup>2002 GAO REPORT, *supra* note 12, at 38.

<sup>86</sup>See Erik Eckholm, *U.S. Cracks Down on Farmers Who Hire Children*, NEW YORK TIMES, June 19, 2010, at A1 (reporting that Labor Secretary Hilda Solis has prioritized enforcement of farm labor laws).

<sup>87</sup>Associated Press, *U.S. Fines 3 Theater Companies Over Child Labor*, IBJ.COM (Mar. 1, 2011), <http://bit.ly/lcxqWu>.

<sup>88</sup>For the technologically adept, the Labor Department updates raw enforcement data quarterly (U.S. Department of Labor, Enforcement Data, (n.d.), <http://bit.ly/jjBiRN>). See generally Bureau of Labor Statistics, U.S. Department of Labor (n.d.), <http://1.usa.gov/izria>; MONTHLY LABOR REVIEW ONLINE (n.d.), <http://1.usa.gov/kl0yqw>; Centers for Disease Control and Prevention, *supra* note 6. Major national newspapers and child labor advocacy groups discussed below may also be of interest.

<sup>89</sup>For links to the child labor laws of all fifty states, the District of Columbia, and Puerto Rico, see Wage and Hour Division, Department of Labor, Youth Rules!, (n.d.), <http://bit.ly/ml2G6h>.

<sup>90</sup>See Jens Krogstad, *Rubashkin Trial: Not Guilty on All Child Labor Charges*, DESMOINESREGISTER.COM (June 7, 2010, 2:50 PM), <http://bit.ly/QLipO> (quoting Black Hawk County District Associate Judge Nathan Callahan, who, presiding in case where owner and manager of Iowa meat packing plant were acquitted of 9,311 criminal counts of child labor violations, stated in open court that case “served [as] a ‘clarion call’ in Iowa that egregious working conditions for children would not be tolerated”).

<sup>91</sup>IOWA CODE §§ 92.20 (Supp. 2010) (criminal penalties), 92.19(1) (negligence *mens rea*); 92.21 (civil penalties and judicial review standards); Iowa Division of Labor Services, Child Labor Law: Child Work Permits (n.d.), <http://bit.ly/jZ7KOh>. The Division of Labor Services, Iowa's agency responsible for enforcing child labor laws, promulgated administrative rules to implement these new provisions (IOWA ADMIN CODE r.875-32.11 to 32.12 (2009)).

<sup>92</sup>Telephone Interview with Gail Sheridan-Lucht, Attorney, Iowa Division of Labor Services, by Candace Kilpinen, Research Assistant, Valparaiso University School of Law (Oct. 25, 2010).

<sup>93</sup>The current economic and political climate focused on resolving the financial crises within states only accentuates the lack of resources available to state labor agencies to enforce all state labor laws, including those directed at child labor (see, e.g., Dave Jamieson, *Minimum Wage, Labor Investigations Targets of Missouri Republicans*, HUFFINGTON POST (April 28, 2011), <http://bit.ly/iQvj0> (reporting that an amendment to a Missouri bill that caps the minimum wage in Missouri would also “eliminate[e] all nine of the state's labor investigators and cut[] \$379,000 from the department's budget ... render[ing] Missouri incapable of enforcing child labor legislation or addressing wage theft claims”); *State Budget Cuts Have Some Department Leaders Considering Consolidation*, KJRH.COM (Feb. 25, 2011), <http://bit.ly/lrj5eC> (interviewing Oklahoma Labor Commissioner Mark Costello regarding the state labor department's potential 50 percent budget decrease and consolidation with the state Construction Industry Board)).

Lawyers can also connect with public and private organizations concerned with child labor issues through research, educational campaigns, and advocacy activities on behalf of children.<sup>94</sup> The Wage and Hour Division generates considerable information on child labor such as regulatory updates, compliance assistance, and statistical reports on enforcement and safety efforts.<sup>95</sup> Another key public organization is the aforementioned National Institute for Occupational Safety and Health, a federal agency that conducts and publishes research seeking to prevent work-related injury and illness to all workers, even child workers.<sup>96</sup> Known for its 2002 recommendations mentioned above, the national institute also funds the National Children's Center for Rural and Agricultural Health and Safety, which "strives to enhance the health and safety of all children exposed to hazards associated with agricultural work and rural environments."<sup>97</sup>

A private organization advocating on behalf of youth workers is the National Young Worker Safety and Health Network, which coordinates interdisciplinary research, advocacy, and collaboration as part of a comprehensive approach to protecting young workers.<sup>98</sup> The Child Labor Coalition, another private organization, is the foremost national advocacy organization on child labor issues.<sup>99</sup> In support of progressive youth worker ini-

tiatives and legislation, the coalition produces information, sponsors dialogue, conducts outreach, promotes advocacy, and lobbies governmental bodies. Of particular interest is the coalition's model state child labor law, which, if adopted, would protect both agricultural and non-farm youth workers in ways not currently provided by federal or state law.<sup>100</sup>

Lawyers should exchange information with professionals and nonprofessionals and encourage them to confront the problems of U.S. child labor as they detect them. Everyone is a potential source of information, advocate, or enforcement agent. Specifically lawyers can educate clients about child labor issues during regular client meetings regardless of the particular legal problem discussed in the meeting. Lawyers should ask all clients about the working experiences of children in their lives. They should inform business clients about the legal and ethical policies of hiring youth workers. These conversations will undoubtedly generate unexpected information about youth employment practices and incidents that attorneys should be prepared to handle immediately with appropriate lawyering strategies.

Family lawyers, like health professionals, have already incorporated screening for the related subject of domestic abuse into client interviews.<sup>101</sup> Lawyers can adapt

<sup>94</sup>Child Labor Public Education Project, Links: Organizations (n.d.), <http://bit.ly/l7U1V1> (links to a wide range of public and private child labor resources).

<sup>95</sup>See generally Wage and Hour Division, U.S. Department of Labor, About WHD, (n.d.), <http://1.usa.gov/ksSMOU> (a portal to child labor issues); *id.*, WHD Local Offices (June 15, 2011), <http://1.usa.gov/lkgFQk> (contact information for Wage and Hour Division offices across the country that can serve as additional resources for the public, including employers, employees, and attorneys).

<sup>96</sup>Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, About NIOSH (n.d.), <http://1.usa.gov/mHNctm>; see also Centers for Disease Control and Prevention, *supra* note 6.

<sup>97</sup>Marshfield Clinic Research Foundation, National Children's Center for Rural and Agricultural Health and Safety (2011), <http://bit.ly/l0eZ0f>. For a thorough summary of youth farmworker statistics and documentation of youth deaths and injuries related to agricultural work, see National Children's Center for Rural and Agricultural Health and Safety, 2011 Fact Sheet: Childhood Agricultural Injuries (Jan. 2011), <http://bit.ly/k5RqIB>.

<sup>98</sup>American Public Health Association, Occupational Health and Safety (June 10, 2011), <http://bit.ly/krpDQP>; Occupational Safety and Health Administration, U.S. Department of Labor, Young Worker Safety and Health Network (n.d.), <http://1.usa.gov/lDOPmy> (for online access to this U.S. government website, choose "Continue to this website" if security certificate problem arises; also click on "Back to Young Workers" hyperlink).

<sup>99</sup>Child Labor Coalition, About Us (n.d.), <http://bit.ly/iWy98O>.

<sup>100</sup>Model State Child Labor Law, 679 Lab. L. Rep. (CCH) ¶ 49,506 (Oct. 6, 1999); see also Child Labor Coalition, Executive Summary of the Model State Child Labor Law (n.d.), <http://bit.ly/ixyOLJ>.

<sup>101</sup>FAMILY VIOLENCE PREVENTION FUND, NATIONAL CONSENSUS GUIDELINES ON IDENTIFYING AND RESPONDING TO DOMESTIC VIOLENCE VICTIMIZATION IN HEALTH CARE SETTINGS 11–19 (2004), <http://bit.ly/j4dBEr>.

existing screening techniques to use in identifying specific child labor violations or in gathering general information about employer practices in the community. Consider the following screening script for a client interview.

**Lawyer:**

Child labor is a major issue in our community because it leads to unnecessary deaths, injuries, decreased academic achievement, illegal harassment, and lifetime handicaps. Because it is such a big problem, I ask all my clients some sensitive questions about youth workers in their lives. My goal is to help kids and families faced with difficult circumstances. And anything you share with me, as your lawyer, is confidential.

- (1) Do you know children under 18 who work?
- (2) Typically how many hours do they work: in a day? in a week?
- (3) What are their job duties? Do they operate equipment? If so, what kind of equipment do they operate?
- (4) Have they ever been hurt on the job?
- (5) Have they ever been bothered, or even touched inappropriately, by a coworker or supervisor either on or off the job?
- (6) Have they complained of conduct that might be considered sexual harassment? If so, what?
- (7) Are they paid regularly and in the appropriate amount?
- (8) Has their employment affected their schoolwork in any way? Have they missed school because of work? Are they too tired to complete homework or attend school?
- (9) Are they ever afraid to go to work? Afraid of anyone at work?

Responses to such questions might reveal violations of child labor laws requiring

legal action to protect children in compromising work environments. A lawyer should first take steps to remove a child victim from the harmful working environment. This might entail referrals to alternative employment opportunities, counseling, or even appropriate health care depending on the circumstances. Once the immediate needs of the vulnerable child worker are met, the lawyer can work with the client and child victim to determine what legal response is appropriate. The lawyer should also facilitate reporting of violations to federal and state labor officials, who can proceed with investigations and possibly public civil or criminal prosecution. If these officials are not responding, the community should be made aware that they are not. Reporting violations is necessary to increase public knowledge of the challenges that youth workers face and to prod agencies into greater enforcement activities.

With a legal strategy in place, the lawyer should take action to ensure that the long-term needs of the child victim are met. Injury on the job, for instance, could limit a child's lifelong prospects of employment. In such cases, child workers may qualify—just like their adult counterparts—for government benefits such as worker's compensation and Social Security Disability Insurance or Supplemental Security Income.<sup>102</sup> Lawyers can make these often complicated benefit programs more manageable for the families involved and help maximize benefits due them.

Client screening will not always reveal child labor violations or issues. Yet, through the screening experience, attorneys increase their personal information about employment practices that will be helpful to others. Moreover, clients will leave the interviews with increased knowledge of the risks of child labor that might affect how they approach the employment of their children.

Similarly health professionals and educators who often deal with the negative

<sup>102</sup>See *supra* notes 65–68 and accompanying text (describing worker's compensation benefits). See generally Social Security Online, Social Security Publications (June 14, 2011), <http://1.usa.gov/m9kAMc> (follow "Disability Benefits" hyperlink to locate information regarding Social Security Disability Insurance and Supplemental Security Income benefits and application procedures).

results of child labor must be informed about the signs of child labor abuse. Health professionals treating injured children can easily adapt the screening procedures they employ in cases of domestic violence.<sup>103</sup> Educators, who often issue state-mandated work permits, should recognize patterns of absence, poor academic performance, and fatigue in students that can result from excessive work and cause negative school performance. Health professionals and teachers can help remove children from inappropriate working conditions and report suspected child labor violations. These professionals can also help children make better employment and educational decisions that maximize future success.

Beyond the front lines of lawyers' offices, schools, and medical facilities, community leaders contribute to the improvement of child labor conditions. Lawyers should give informational presentations about child labor to churches and to groups such as the League of Women Voters and Chamber of Commerce and churches. Linking an expanded knowledge of child labor with the intentional outreach of philanthropic organizations will increase community activism for youth workers. Likewise, utilizing local media to tell the story of child labor and getting labor unions, which naturally seek to reduce labor hazards and abuses, involved can potentially generate results among employers, legislators, and administrators.

In the end lawyers are well positioned to be sources of knowledge about child labor in their communities. With such knowledge, they can advocate on behalf of individual victims of hazardous youth employment. As a permanent activist for the rights of children in the workplace, they can also effect changes in employer conduct, parental perspectives, community awareness, and legal responses to child labor issues.

#### IV. The Problem and Some Solutions

The exploitation of child labor has not been eradicated. Americans simply do

not recognize the problems associated with contemporary child labor. We see this teenage workforce in our daily lives and consume the products and services they create, but we do not "see" the issue. Federal and state laws and regulations fail to protect our youths adequately in the workplace because current statutes do not consider the physical, educational, emotional, and socioeconomic impact of work on children. Governments, both federal and state, thwart child labor enforcement by appropriating insufficient resources for inspections and by failing to prosecute violations. Shrinking government activity makes private, especially legal, engagement even more indispensable in today's economic and political environment.

To accomplish such engagement, lawyers can educate themselves and others about the realities of child labor. Such efforts require constant monitoring of both federal and state labor law, its enforcement, and the accompanying trends in local communities related to child labor. Lawyers can also alleviate the plight of child workers by connecting to local health and education professionals who can react quickly to child labor concerns on the front lines of emergency rooms and classrooms. By networking with public and private organizations engaged in child labor issues nationally, regionally, and locally, lawyers will keep child labor in the forefront and propel the cause of child workers further. Most important, lawyers must use their legal skills to help individual children victimized in the workplace. In sum, lawyers must be the activists in every community that intentionally initiate personal and communitywide efforts to end the tragedy of American youths in the workplace.

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<sup>103</sup>FAMILY VIOLENCE PREVENTION FUND, *supra* note 101 (screening procedures for domestic abuse—specific questions, intervention techniques, and documentation instructions to be used by health professionals).



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