



Children in the Fields

AN
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PROBLEM

Association of Farmworker Opportunity Programs
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*In every child who is born, no matter
what circumstances, and of no matter
what parents, the potentiality of the
human race is born again: and in him,
too, once more, and of each of us, our
terrific responsibility toward human life;
toward the utmost idea of goodness . . .*

*—James Agee,
Let Us Now Praise Famous Men*

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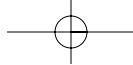
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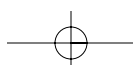
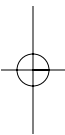
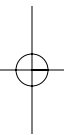
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Preface

THE ASSOCIATION OF FARMWORKER OPPORTUNITY PROGRAMS' (AFOP) mission is to improve the quality of life for migrant and seasonal farmworkers and their families by providing advocacy for the member organizations that serve them. AFOP's 51 member organizations are nonprofit corporations and public agencies dedicated to improving the lives of farmworkers in America. Since 1971, AFOP has supported its member agencies, which provide employment training and educational services to farmworkers so that they can pursue the American Dream. AFOP's members operate their services through the National Farmworker Jobs Program, which is funded by the U.S. Department of Labor.

AFOP launched its Children in the Fields campaign in 1997 after its members expressed concerns that child labor was flourishing in the agricultural sector, despite the dangerous and exhausting conditions that prevail there.

Definitions of Migrant and Seasonal Farmworkers

There are no universally accepted definitions of migrant and seasonal farmworkers. This publication will use the definitions in the principal federal employment law for farmworkers, the Migrant and Seasonal Agricultural Worker Protection Act, which appear below:

- ◆ *A migrant agricultural worker* is “employed in agricultural employment of a seasonal or temporary nature, and . . . is required to be absent overnight from his permanent place of residence.”
- ◆ *A seasonal agricultural worker* is “employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence.”

A common misconception is that migrant and seasonal farmworkers are all undocumented immigrants. The March 2005 National Agricultural Workers Survey, however, indicates, based on data from 2001 and 2002, that 47 percent of migrant and seasonal farmworkers are U.S. citizens or individuals with valid work authorization.¹ An even higher proportion of farmworker children are American citizens, since many of them were born in the United States.

¹ U.S. Department of Labor, *Findings from the National Agricultural Workers Survey (NAWS) 2001-2002, A Demographic and Employment Profile of United States Farm Workers*, U.S. Department of Labor, Office of the Assistant Secretary for Policy, Office of Programmatic Policy, Research Report No. 9, March 2005, <http://www.doleta.gov/agworker/report9/toc.cfm>, p. ix.

◆ Introduction

SWEAT BEADS DOWN SERGIO'S FACE as he toils in a south Texas onion field. He picks onions with the skill and pace of an adult, yet he is only ten years old. Sergio wears a sleeveless shirt and shorts, and the May sun scorches his skin. His bare feet sink into the hot earth, exposing him to harmful pesticides that have been sprayed on the soil. A Band-Aid falls off his sweaty finger, revealing a gash where Sergio had cut himself earlier with his razor-sharp scissors, used for trimming the onion stalks. He has been working in the fields since age seven.

Nearby, nine-year-old Cristina works alongside five family members, including siblings and cousins. This is her second weekend in the fields and she struggles to keep up with the others. Together, the six hope to earn \$100 for a full day's work, which averages out to around \$2 per hour worked.

More than a dozen other children are working in the same field. They lean over to snip and gather onions. Exhaustion paints their faces as they carry heavy buckets to burlap sacks stationed around the field. The children earn about a penny for every pound of onions picked.

Because Sergio and Cristina are less than 12 years old, their employer may be violating the federal child labor law by allowing them to work. Most of the other children, however, appear to be at least 12 years old; such children can legally work in agriculture, except during school hours, with their parents' permission or with their parents on the same farm. For children who are at least 14 years old, the only restriction is that they cannot work during school hours.

Hundreds of thousands of children work as hired labor in America's fields and orchards. These children are among the least protected of all working children. Since 1938, exemptions in the federal child labor law—the Fair Labor Standards Act, or FLSA—have excluded child agricultural workers from many of the protections afforded to almost every other working child.



Sergio, age 10, already has three years of work experience in the fields.

Reid Maki

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Agriculture is considered one of the three most dangerous industries in the United States. For agricultural jobs that are determined by the Secretary of Labor to be particularly hazardous for children, federal law imposes a minimum age of 16. The minimum age for hazardous work in all other industries is 18. Furthermore, in the case of jobs that are not determined to be particularly hazardous, federal law sets the standard minimum age in agriculture at 14 years, whereas the standard age limit in all other sectors of the economy is 16 years. Moreover, in agriculture there are numerous exceptions that enable children as young as ten to work legally on farms. Despite overwhelming evidence from public agencies and private organizations that these agricultural workplaces endanger children, Congress maintains the legal discrimination in the FLSA. This inequity allows youth working on farms to perform back-

breaking labor for long hours and in extreme conditions at ages less than 14, when the very same law forbids children this young from working in an air-conditioned office.

Since 1997, the Association of Farmworker Opportunity Programs (AFOP) has advocated for stronger federal child labor laws through its Children in the Fields campaign. It has partnered with the Child Labor Coalition (CLC), the National Consumers League, and other concerned parties to publicize the plight of this hidden population. It has used its extensive network of member agencies to inform the public and advocate for federal legislation that would strengthen the child labor safeguards in agriculture so that they are just as protective as those in all other industries. AFOP has conducted field investigations that have uncovered children as young as nine working in the fields. Most Americans still envision farms as safe, nurturing places. The Children in the Fields campaign has shown that the myth of the agrarian idyll does not extend to the children of America's migrant and seasonal farmworkers.

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This report details the current situation of child farmworkers in the United States and proposes changes in federal law and regulations to improve their welfare. Section 1 examines the factors that cause hundreds of thousands of children to work on farms as hired labor. This study does not encompass children who work on farms owned by their parents, since their work circumstances are much different from the youth who are hired as migrant and seasonal farmworkers. Therefore, our proposals do not seek to regulate conditions on family farms. Sections 2 and 3 describe the working conditions that farmworker youth encounter and the effects of such work on their pursuit of a decent education. Section 4 analyzes existing federal laws regarding children serving as agricultural workers from the

policy and enforcement perspectives. Section 5 discusses two pieces of legislation—the Youth Worker Protection Act (YWPA) and the Children's Act for Responsible Employment (CARE Act)—that, if passed by Congress, would improve health and safety standards significantly for child farmworkers. Section 6 provides recommendations for federal policymakers, government agencies, and farmworker advocates. This report also includes a comparison of the Fair Labor Standards Act protections for children in agriculture and children in non-agricultural work.

1 ♦ Who Are Child Farmworkers and Why Do They Work?

THERE ARE THREE PRINCIPAL TYPES OF CHILD FARMWORKERS. Perhaps the category that comes to mind first are the children who help out in their parents' fields. This type of child farmworker can be found on family farms throughout the United States. Their work is not regulated by federal law nor is there any serious proposal to do so. The second type are those American youth who work on local farms—primarily in rural areas of the Midwest, Southwest, and South—part-time or during their summer vacations as a way of earning spending money.

The third type of child farmworker, and the one that is the focus of this report, is the youth who feels compelled to work out of economic necessity. Of the three categories of child farmworkers, those in the third group are the most likely to be poor, Hispanic, and undereducated. Current U.S. law—namely, the FLSA—inadequately protects both adult and child farmworkers, exposing these workers to harm from dangerous pesticides, equipment, and intense heat. These children often migrate with their families, or alone, from farm to farm as they follow the harvest, in order to work as many hours as possible. The economic hardships imposed by migration can have significant consequences on children's health, education, and self-esteem.

AFOP estimates that 85 percent of migrant and seasonal workers are racial minorities, predominantly Latino.² According to the most recent National Agricultural Workers Survey (NAWS), the median total family income for farmworkers (including income from all sources, not just farm work) was in the range of \$12,500–\$14,500 per year, or \$240–\$279 in gross wages per week. Thirty percent of all farmworkers, according to the NAWS, had total family incomes that were below the poverty line.³ Thus, even when children work alongside their parents,



Jonathan, 13, works in the fields to help his family make ends meet.

² Association of Farmworker Opportunity Programs, "Children in the Fields: The Inequitable Treatment of Child Farmworkers" (Washington: AFOP, n.d.), <http://www.afop.org/childlabor.htm>.

³ NAWS 2001-2002, p. xi.

family income is extremely low. Meanwhile, in an increasingly common occurrence, youth aged 14 to 17 are immigrating alone to the United States to perform farm work to support their family members back home. The Department of Labor reported in 2000 that 80 percent of migrant teens did not live with any other family member. Of those unaccompanied migrant minors, 91 percent were foreign-born.⁴ Like their adult counterparts, virtually all migrant and seasonal farmworker youth live in extreme poverty and possess educational levels below the national average for their age.

Reports concerning the number and makeup of child farmworkers vary widely. The U.S. Department of Labor's *Report on the Youth Labor Force* cites the NAWS, which found youth between the ages of 14 and 17 made up seven percent of all farmworkers between Fiscal Year 1993 and FY 1998 (or 126,000 of 1.8 million farmworkers, according to the NAWS calculations).⁵ The NAWS did not interview children younger than 14 years old, however, and it acknowledged knowing "very little about [the] level or type of workforce participation of children under the age of 14."⁶ In 1998, the General Accounting Office (now the Government Accountability Office [GAO]) estimated that 300,000 youth aged 15 to 17 were working in agriculture.⁷ The United Farm Workers of America (UFW) has cited estimates as high as 800,000.⁸



Reid Maki

Perla, 12, struggles with heavy buckets of onions. In an average day, farmworkers harvest and carry approximately two tons of onions.

AFOP believes that there are between 400,000 and 500,000 child farmworkers in the United States. These are children who work on farms not owned by their families. AFOP bases its approximation on data from the U.S. Department of Agriculture's National Agricultural Statistics Service (NASS) stating that 431,730 youth between the ages of 12 and 17 were hired for agricultural work in 1998.⁹ This figure represents both migrant and seasonal farmworkers and local children who work as hired help on a farm that is not owned or operated by their parents.¹⁰ During its field visits from 2003 to 2005, AFOP observed children under 12 working in the fields. In addition, many children work "off the books" by using their parents' social security numbers, suggesting that the total of child farmworkers may be closer to 500,000.

The wide range of estimates on the number of child farmworkers indicates the need for better data collection on this population. A section of the National Agricultural Workers Survey should be devoted to all agricultural workers under the age of 18. The section should include the same information that researchers gather for adult farmworkers, such as demographic characteristics, wage rates, legal status, insurance benefits, and working conditions.

⁴ U.S. Department of Labor, *Report on the Youth Labor Force* (Washington: DOL, 2000), <http://www.bls.gov/otpub/rylf/pdf/rylf2000.pdf>, p. 54.

⁵ *Ibid.*, p. 53.

⁶ *Ibid.*, p. 52.

⁷ U.S. General Accounting Office, "Child Labor in Agriculture: Characteristics and Legality of Work," GAO/HEHS-98-112R (Washington: U.S. General Accounting Office, 1998), p. 2.

⁸ Cited in Human Rights Watch, *Fingers to the Bone: United States Failure to Protect Child Farmworkers* (Washington: Human Rights Watch, 2000), p. 10.

⁹ Cited in National Farm Medicine Center et al., *Benchmarking Report: Hiring and Safety Practices for Adolescent Workers in Agriculture* (Marshfield, WI: Marshfield Clinic, 2004), <http://www.marshfieldclinic.org/nfmc/Pages/Proxy.aspx?Content=MCRF-Centers-NFMC-nccrahsbenchmarkreport.1.pdf>.

¹⁰ This number includes children from the second and third categories of child farmworkers. The only children excluded are those who work on their family's farm. To AFOP's knowledge, no credible national survey has determined the number of child migrant and seasonal farmworkers in America.

2 ♦ Working Conditions

AGRICULTURE IS ONE OF THE MOST DANGEROUS OCCUPATIONS for children in the United States.¹¹ The National Consumers League listed agricultural fieldwork and processing in its “2006 Five Worst Teen Jobs.” Between 1992 and 2000, 42 percent of all work-related deaths of minors occurred in agriculture.¹² Half of the victims in agriculture were 14 years old or younger, whereas the majority of work-related youth fatalities in other sectors involved teens aged 15 and older. According to the U.S. Department of Health and Human Services’ National Institute for Occupational Safety and Health (NIOSH), 40 percent of all youth fatalities from 1992 to 1997 occurred in the agriculture, forestry, and fishing sector, even though this industry accounted for only 13 percent of all workers under the age of 18.¹³ The U.S. Department of Labor’s Bureau of Labor Statistics (BLS) reported that the number of fatal injuries involving youth farmworkers from 1992 to 1998 was 30 percent more than the number of fatalities in the retail trade and construction industries *combined*.¹⁴

The GAO estimated in 1998 that more than 100,000 children and adolescents are injured on farms annually.¹⁵ Based on national data, the BLS concludes that “the risk of a fatality (per hour worked) in an agricultural wage and salary job is over 4 times as great as the average risk for all working youths.”¹⁶ The number might be higher for hired farmworker youth, but no data exist that separate injuries to hired laborers from injuries to children working on their family’s farm. Even so, these statistics are especially troubling because

*. . . more than
100,000 children
and adolescents
are injured on
farms annually.*

¹¹ Although mining is considered more dangerous than agriculture, the federal child labor regulations stipulate that no child under 18 years old may work in mining (except in office and other non-hazardous jobs).

¹² National Consumers League, “Clocking in for Trouble: Teens and Unsafe Work” (Washington: National Consumers League, n.d.), <http://www.nclnet.org/labor/childlabor/jobreport.htm>.

¹³ National Institute for Occupational Safety and Health, *National Institute for Occupational Safety and Health Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders* (Cincinnati, OH: DHHS NIOSH, 2002), <http://www.cdc.gov/niosh/docs/nioshrecsdolhaz/pdfs/dol-recomm.pdf>, p. 11 (Table 3).

¹⁴ DOL 2000, p. 62.

¹⁵ AFOP, <http://www.afop.org/childlabor.htm>.

¹⁶ DOL 2000, p. 66.



Robin Romano

Mariela, 10, suffered a severe allergy that left her hoarse on her first day of farm work.

90 percent of children in migrant and seasonal farmworker families had no health insurance in 2000.¹⁷ Child farmworkers literally risk their lives for the opportunity to earn less than \$1,000 on average per year, according to the Department of Labor.¹⁸

All farmworkers are exposed to countless dangers at the workplace, including pesticides, heat exhaustion, harmful ultraviolet (UV) rays from the sun, heavy machinery, sharp tools, and muscular and skeletal injuries associated with repetitive motions and constant bending over. Children who are still developing physically and mentally are particularly vulnerable to these hazards, especially when they work long hours. According to Human Rights Watch, “work in excess of 20 hours per week has a substantial and well-documented negative impact on teenagers’ health, social development, and education.”¹⁹ This section analyzes a number of these risks to child farmworkers’ health. It also examines the reasons why children working in agriculture are so likely to receive low wages.

Pesticides

*Seventeen-year-old Gloria was picking oranges when she began to complain of nausea, dizziness, blurred vision and stomach cramps. The orchard had been sprayed with pesticides the day before. No warning signs had been posted.*²⁰

Recent studies have demonstrated the greater health risks that pesticides pose for children. The Natural Resources Defense Council’s 1998 report on the perils of pesticide exposure for children noted that children are at higher risk than adults because their bodies and organs are more vulnerable and they “are disproportionately exposed to pesticides compared with adults due to their greater intake of food, water, and air per unit of body weight.”²¹ The 2002 NIOSH report noted that the incidence of acute occupational pesticide-related illness in youth is 1.71 times that of working adults aged 25 to 44 years.²² In July 2006, scientists at the Wake Forest University School of Medicine released a report showing that children of immigrant farmworkers in North Carolina had higher levels of organophosphate insecticides in their urine samples than children who did not live on farms. Although the researchers could not conclude that the exposure was enough to damage the children’s health, lead researcher Thomas Arcury said, “Because we don’t know how much is safe, we must assume, as a precaution, that no level is safe. Efforts to reduce the exposure of these children to pesticides must be redoubled.”²³

¹⁷ Sara Rosenbaum and Peter Shin, “Migrant and Seasonal Farmworkers: Health Insurance Coverage and Access to Care” (Washington: Kaiser Commission on Medicaid and the Uninsured, 2005), <http://www.kff.org/uninsured/upload/Migrant-and-Seasonal-Farmworkers-Health-Insurance-Coverage-and-Access-to-Care-Report.pdf>, p. 1.

¹⁸ DOL 2000, p. 56.

¹⁹ Human Rights Watch, p. 48.

²⁰ University of California, Berkeley-Labor Occupational Health Program, “Are You a Teen Working in Agriculture? Protect Your Health Know Your Rights” (Berkeley, CA: UC Berkeley LOHP, 2001), http://www.dir.ca.gov/dosh/dosh_publications/TeenAgEng.html.

²¹ Natural Resources Defense Council, *Trouble on the Farm: Growing Up with Pesticides in Agricultural Communities* (New York: Natural Resources Defense Council, October 1998), p. viii.

²² NIOSH, p. 93, cited in Child Labor Coalition, “Protecting Working Children in the United States: Is the Government’s Indifference to the Safety and Health of Working Children Violating an International Treaty?” (Washington: Child Labor Coalition, 2005), p. 12.

²³ Wake Forest University Baptist Medical Center, “Research Documents Children’s Exposure to Pesticides, Suggests Need for Family Education,” Press Release, 18 July 2006.

Children in the Fields

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Currently, the Environmental Protection Agency's (EPA) regulations prohibit farmworkers from reentering a sprayed area for a specific time interval except under very limited circumstances. The EPA's Worker Protection Standard bases its established reentry intervals (REIs) on a body weight of 154 pounds, except for those pesticides that might affect a fetus, in which case the EPA uses a body weight of 132 pounds (considered the average for a pregnant female of child-bearing age). The 154-pound body weight is considered the average for a male adult, which means that children take potentially harmful risks when they enter fields after they have been sprayed with pesticides, even if they follow the REIs.

Federal child labor regulations require farmworkers who handle toxic chemicals falling into Toxicity Categories I and II to be at least 16 years old. (These chemicals have an acute toxicity that can cause immediate symptoms such as blurred vision and cardiac arrhythmia.) Children under 16 in agriculture, however, can handle chemicals in Toxicity Categories III and IV; these are chemicals that have chronic effects that typically take more time to manifest themselves, such as sterility and blood disorders. The EPA's Worker Protection Standard requires that all workers who handle pesticides receive pesticide safety training. This does not routinely happen. As part of its Children in the Fields campaign, AFOP interviewed several groups of young farmworkers in 2002-2003, and none had received pesticide safety training.²⁴ Despite the regulations imposed by the EPA, researchers have estimated that pesticides sicken up to 300,000 farmworkers per year.²⁵

In March 2000, the GAO released a report calling for numerous changes that would better protect child farmworkers. According to the report, over 75 percent of all pesticides in the United States—950 million pounds a year—are used in the agricultural sector.²⁶ Children have a high skin to body weight ratio and are in a more rapid stage of development, which makes them more vulnerable than adults to pesticide exposure. According to the Pesticide Action Network North America (PANNA), organophosphate and carbamate pesticides—two common types—“are linked to cancer, neurological problems (including Parkinson's disease), respiratory problems, and developmental problems.”²⁷ Farmworkers also suffer a disproportionately high number of cases of dermatitis, which may be connected to pesticide exposure.²⁸

A study in the April 2003 issue of the *American Journal of Public Health* examined pesticide-related illnesses among youth workers. From 1993 to 1998, the researchers identified 333 acute illnesses among teen workers ages 15 to 17. Sixty-four percent of the sicknesses occurred in agricultural workers. At least 18 youth were sickened despite following the Worker Protection Standard reentry requirements.²⁹ “Because these acute illnesses affect young people at a time before they have reached full developmental maturation, there is also concern about unique and persistent chronic effects,” the study's authors wrote. “The FLSA and the Worker Protection Standard should be reviewed and appropriately revised to ensure that workers younger than 18 are protected against toxic pesticide exposures.”³⁰

²⁴ AFOP, “Many Texas Families Migrate to Survive,” *Child Labor Bulletin* 1, no. 2 (2002), p. 12.

²⁵ NIOSH, pp. 92, 93.

²⁶ GAO, “Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and Their Children,” GAO/RCED-00-40 (Washington: U.S. General Accounting Office, 2000), p. 5.

²⁷ Pesticide Action Network North America, “EPA Scientists and Public Health Advocates Demand Halt to EPA Officials' Approval of Dangerous Organophosphate and Carbamate Pesticides,” 14 June 2006, <http://panna.org/resources/newsroom/epaOrganophosphates20060714.dv.html>.

²⁸ Farmworker Health Services, Inc., “About Migrant and Seasonal Farmworkers” (Washington: Farmworker Health Services, n.d.), <http://www.farmworkerhealth.org/migrant.jsp>.

²⁹ Geoffrey M. Calvert et al., “Acute Pesticide-Related Illnesses Among Working Youths, 1988-1999,” *American Journal of Public Health* 93, no. 4 (2003), pp. 607, 609.

³⁰ *Ibid.*, pp. 608, 610.

“The major cancer studies going on in North America . . . are focusing specifically on farms in the rural states, because there has been this seemingly large increase in cancer in this normally healthy population.”
—James Brophy, researcher

Furthermore, Canadian researchers published a study in the *Annals of the New York Academy of Science* in October 2006 that drew a link between women farmworkers and breast cancer. According to the study, women with breast cancer were nearly three times more likely to have worked on farms—many at a young age, when breast tissue is believed to be more vulnerable to toxins—than women in the control group.³¹ “Agents present in agricultural settings may make a woman more susceptible to breast cancer, especially if she is exposed to these agents early in her life,” co-principal investigator Dr. James Brophy said.³² He also noted, “The major cancer studies going on in North America . . . are focusing specifically on farms in the rural states, because there has been this seemingly large increase in cancer in this normally healthy population.”³³

There may not yet be clear evidence of the exact extent to which children are more vulnerable than adults to the harmful effects of pesticides, but there is little debate about children’s greater vulnerability. The EPA acknowledged in March 2003 that children ages 3 to 15 may be three times more likely to develop cancer after exposure to certain pesticides than adults.³⁴ In August 2006, the EPA concluded a ten-year investigation on the health effects of pesticides with a



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A recent study has shown that female farmworkers are three times more likely to develop breast cancer than non-farmworkers.

recommendation to eradicate 3,200 uses and modify 1,200 uses of organophosphate and carbamate pesticides, which together make up approximately 45 percent of the total pesticide applications in the United States.³⁵ Nevertheless, the EPA has faced harsh criticism, including objections from its own employees, for failing to implement more stringent restrictions that would better protect agricultural workers and their families. In a letter published on May 24, 2006, leaders of three unions representing EPA employees criticized the EPA for endangering public health by allowing the ongoing use of potentially harmful pesticides. The letter emphasized the

dangers that children face from pesticide exposure, noting, “The children of farmworkers, living near treated fields, are also repeatedly exposed through pesticide drift onto outdoor play areas and through exposure to pesticide residues on their parents’ hair, skin, and clothing.”³⁶

³¹ James T. Brophy, “Occupation and Breast Cancer: A Canadian Case-Control Study,” *Annals of the New York Academy of Science* 1076 (2006), p. 765.

³² “Windsor Study Raises Questions About Work History and Breast Cancer Risk,” Press Release, 12 October 2006, <http://www.newswire.ca/en/releases/archive/October2006/12/c6838.html>.

³³ “Breast Cancer More Likely in Farm Workers: Study,” *CTA.ca*, 12 October 2006, http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20061012/breastcancer_farming_061012/20061012?hub=Health.

³⁴ Reid Maki, “Children in the Fields: America’s Hidden Child Labor Problem,” in *Child Labor World Atlas: A Reference Encyclopedia* (New York: ME Sharpe, forthcoming 2008).

³⁵ See Michael Janofsky, “E.P.A. Recommends Limits on Thousands of Pesticides,” *The New York Times*, 4 August 2006, p. A.14; and AFOP, “Studies Find Children May Face Greater Risk from Pesticide Exposure,” *Washington Newswire* 24, no. 6 (2006), p. 6.

³⁶ Dwight A. Welch et al., “Union Letter to EPA Administrator,” National Treasury Employees Union, American Federation of Government Employees, Engineers and Scientists of California, 24 May 2006, <http://www.nrdc.org/media/docs/060525.pdf>.

Although the EPA acknowledges the negative health impact of pesticides on children, it has been slow to react and defensive when its policies are questioned. In November 2003, DOL stated that the EPA would address concerns raised by the International Labor Organization regarding pesticide dangers to child farmworkers, but no public statement has been made since.³⁷ Inexplicably, despite its own admission that children probably face a greater risk than adults, the EPA continues to use the 154-pound body weight to determine its reentry intervals.

The EPA should devise unique REIs for child farmworkers that compensate for their lower body weight and particular susceptibility to pesticides. Moreover, Congress should amend the child labor law to raise the minimum age for particularly hazardous work in agriculture from 16 to 18 years. Additionally, the U.S. Department of Labor should amend its child labor regulations so that pesticides and other dangerous chemicals of all toxicity categories are covered, not just Toxicity Categories I and II. There is a need for increased research on the subject, and it should be given the highest priority, in view of the importance of protecting children.



Gaby, 13, is exposed to pesticides through direct contact with soil residue and the crops.

Environmental Conditions and Sanitation

*Seventeen-year-old Martín died after harvesting melons in the hot sun for 4 hours. He was taken by ambulance to a hospital after complaining of a headache, nausea, and difficulty breathing. He died because his body overheated.*³⁸

Farm labor is often carried out in excruciating weather conditions that add an extra burden to the grueling tasks that farmworkers perform. Farmworkers regularly work for 10 to 12 hours a day in 100-degree temperatures under a blistering sun. These circumstances can lead to sunstroke, skin cancer, heat exhaustion, dehydration, and other sun- and heat-related illnesses. No national statistics on the number of heat-related farmworker fatalities are available, but during the summer of 2005, six farmworkers died in heat-related incidents in California and three others died in North Carolina.³⁹ The EPA and DOL's Occupational Safety and Health Administration (OSHA) have acknowledged that children are more vulnerable to heat stress than adults.⁴⁰

During field investigations in May 2003, AFOP found children as young as nine and ten years old working in Texas onion fields, where temperatures reached the mid-90s, although it was only late spring. Two of the principal causes of skin cancer are unprotected or excessive exposure to harmful UV radiation—which is strongest between 10 am and 4 pm—and severe sunburns as children.⁴¹ According to the Arizona Department of Health Services, 80 percent of a person's lifetime

³⁷ CLC 2005, p. 24.

³⁸ UC Berkeley LOHP, http://www.dir.ca.gov/dosh/dosh_publications/TeenAgEng.html.

³⁹ United Farm Workers of America, "UFW hails historic breakthrough to protect farm workers from extreme heat," http://www.ufw.org/_board.php?b_code=org_vic; and North Carolina Agricultural Safety and Health Bureau, "Preventing Heat Stress in Agriculture," *The Cultivator* 25 (May 2006), <http://www.nclabor.com/ash/cultivator25.pdf>.

⁴⁰ U.S. Environmental Protection Agency and Occupational Safety and Health Administration, *A Guide to Heat Stress in Agriculture* (Washington: EPA, 1994), p. 1.

⁴¹ American Cancer Society, "Skin Cancer Facts," 5 April 2006, http://www.cancer.org/docroot/PED/content/ped_7_1_What_You_Need_To_Know_About_Skin_Cancer.asp.

According to the Arizona Department of Health Services, 80 percent of a person's lifetime sun exposure occurs before the age of 18 and a single bad sunburn in childhood can double the risk of developing skin cancer in the future.

sun exposure occurs before the age of 18 and a single bad sunburn in childhood can double the risk of developing skin cancer in the future.⁴² AFOP staff noticed that many child farmworkers wore clothing that left much of their skin exposed to the sun.

In 2000, a Human Rights Watch study on child farmworkers found that “nearly all of the children interviewed” had worked on farms where sanitation requirements were not met.⁴³ Children reported working in fields where the drinking water would run out, no water was provided, or the only beverages available were overpriced beers and sodas.⁴⁴ Aside from placing an unfair economic burden on farmworkers, these two beverages adversely affect workers' health and safety, since carbonated and alcoholic beverages fail to replenish fluids and alcohol can impair workers' ability to safely operate tools and machinery.

Furthermore, farmworkers who might drink water from irrigation ditches or other contaminated sources as a last resort risk illnesses such as dysentery and typhoid fever.



Robin Romano

Yesinia, 12, risks getting skin cancer by working in the fields with her face and arms exposed to the sun.

Around half of the teens interviewed by Human Rights Watch had no access to handwashing facilities. This increases their risk of harm from pesticides, especially since many farmworkers eat lunch on-site. Human Rights Watch noted that some workers would wash in contaminated irrigation ditches. In fact, sometimes water from irrigation ditches was provided to workers so they could wash their hands. Human Rights Watch interviewed Art Morelos, a compliance supervisor with Arizona's Occupational Safety and Health Division, who commented, “Occasionally farm labor contractors will get water from the ditches or drainage canals and put it in a container as water for the employees to wash their hands with.”⁴⁵ Water from irrigation canals often contains harmful chemicals, waste material, and parasites.⁴⁶ Morelos also reported that a lack of toilet facilities was the “biggest complaint in the fields.”⁴⁷

Regulations issued by OSHA require all farms (except for certain small farms) to provide workers of all ages with access to drinking water, hand-washing facilities, and toilets, but weak enforcement has resulted in these services often not being provided. Improved

enforcement and stricter penalties would push agricultural employers to extend these basic

⁴² Arizona Department of Health Services, *Arizona's Children and the Environment: A Summary of the Primary Environmental Health Factors Affecting Arizona's Children* (Arizona: Office of Environmental Health, 2003), http://www.azdhs.gov/phs/oeht/pdf/gov_chldm_hlth_rpt.pdf.

⁴³ Human Rights Watch, p. 23. All farms (except for certain small farms) are required by federal regulations to provide farmworkers with access to drinking water, hand-washing facilities, and toilets.

⁴⁴ *Ibid.*, pp. 27, 28.

⁴⁵ Human Rights Watch interview with Art Morelos, Compliance Supervisor, Industrial Commission of Arizona, Division of Occupational Safety and Health, 15 October 1998, Tucson, Arizona. Cited in Human Rights Watch, p. 25.

⁴⁶ *Ibid.*, pp. 25, 26.

⁴⁷ *Ibid.*, p. 24.

protections to all farmworkers, including children. Farmworkers should also receive training about how to detect and protect themselves from heat exhaustion, dehydration, and skin cancer.

Dangerous Machinery and Tools

A 14-year-old male farmworker died on August 15, 2002, after he fell into an operating cattle feed grinder/mixer. He was using a hook to drop bales of hay into the grinder when he lost his balance and fell into the grinder. His death went unnoticed for 20 minutes, until a co-worker discovered the machine had been left unattended.⁴⁸

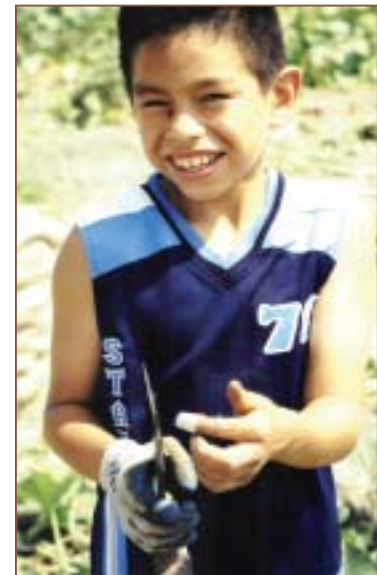
The Akron Beacon Journal reported in late June 2006 that an 18-year-old driving an excavator killed his younger brother on the boy's seventh birthday.⁴⁹

On December 31, 2006, a two-year-old toddler was killed when a trailer full of oranges ran over him. The victim's ten-year-old brother was driving a pickup truck attached to the trailer, and he did not notice that the toddler had slipped between the truck and the trailer.⁵⁰

These examples and the previously discussed NIOSH report demonstrate the dangers that youth encounter on farms due to machinery. In 1998 alone, NIOSH found that children under the age of 16 suffered 3,069 non-fatal injuries from tractors, 3,035 machinery-related injuries, and 5,444 vehicle-related injuries on farms. Over 70 percent of the tractor and vehicle-related injuries occurred while children were operating the machines, and virtually all of the machinery-related injuries happened while children were operating the equipment.⁵¹

Fifty-one of the 162 child fatalities in agriculture, forestry, and fishing between 1992 and 1997 occurred while the youth were operating or working near tractors.⁵² The chief cause of injury and death is tractor rollover. The NIOSH report noted that requiring tractors to have both rollover protective structures (ROPS)—which protect the tractor operator if the tractor overturns—and seatbelts would eliminate nearly all fatalities when tractors roll over.⁵³

Federal child labor regulations allow children as young as age 14 to operate tractors without ROPS and seatbelts,⁵⁴ despite NIOSH's recommendation in 2002 that children under age 16 only be permitted to use tractors with ROPS and seatbelts.⁵⁵ OSHA does require, however, that all tractors manufactured after 1976 must be furnished with ROPS and that the driver must wear a seatbelt. Even this OSHA requirement is deficient because it does not require ROPS for the many tractors manufactured prior to 1976 that are still in use today. If the federal child labor regula-



Sergio shows where he cut himself with his scissors earlier in the day.

⁴⁸ NIOSH, "Youth Farm Worker Dies After Falling Into Operating Feed Grinder/Mixer - Ohio," NIOSH In-house Fatality Assessment and Control Evaluation (FACE) Report 2002-10, 20 November 2003, <http://www.cdc.gov/NIOSH/FACE/In-house/full200210.html>.

⁴⁹ AFOP, "Boy Dies on Farm," *Washington Newslite* 24, no. 6 (2006), p. 19.

⁵⁰ Paraphrased from Andrew Dunn, "Haven Toddler Killed in Accident," *The Ledger*, 31 December 2006, <http://www.theledger.com>.

⁵¹ NIOSH 2002, pp. 69, 75, 84.

⁵² NIOSH 2002, p. 12.

⁵³ *Ibid.*, pp. 67, 69, 71.

⁵⁴ Children even younger than 16 can operate tractors if they are enrolled in a vocational education training program.

⁵⁵ *Ibid.*, pp. 67, 71.

tions were strengthened to bar any child from operating any tractor unless it had ROPS and unless the child was wearing a seatbelt, this change would protect thousands of children from possible serious injury or death every year.

Farm work is an extremely dangerous occupation, but children under age 16 are allowed to operate heavy machinery and 16-year-olds can legally perform other hazardous labor.

Child farmworkers face many other dangers beyond tractors. They fall off of ladders or other elevated surfaces, become entangled and crushed or dismembered by machinery, and suffer cuts and sprains while using farm tools designed for adult hands and strength. Many accidents are the result of children's lesser ability to recognize potentially hazardous situations, coupled with the failure by the employer to provide adequate safety training, including face-to-face explanations of any operator's manual to child workers. In other situations, injuries are simply a consequence of long hours and repetitive motions with heavy machinery or sharp tools.

Farm work is an extremely dangerous occupation, but children under age 16 are allowed to operate heavy machinery and 16-year-olds can legally perform other hazardous labor. To protect youth farmworkers, Congress should pass legislation increasing the age limit for hazardous work in agriculture to 18, the minimum age for hazardous labor in non-agricultural industries.

Musculoskeletal Injuries

Farm work often involves constant bending over, carrying heavy items, and repetitive motions during long work hours, which contribute to musculoskeletal injuries. Since children are still developing physically, their exertion often places a greater stress on their bodies, with serious long-term consequences. Adolescents also undergo growth spurts, which may decrease flexibility and increase their susceptibility to a variety of musculoskeletal injuries, such as bursitis, tendonitis, sprains, and carpal tunnel syndrome.⁵⁶



Farmworkers are often bent over in the fields 8 to 12 hours a day, increasing their risk of developing musculoskeletal disorders.

A 2004 study on the risk of low-back disorders among youth farmworkers published in the *Journal of Agricultural Safety and Health* revealed that “the magnitude of several work-related factors . . . for many farm activities were equal to or greater than those associated with high injury risk jobs previously assessed in industrial workplaces.”⁵⁷ In 2001, researchers Larry Chapman and James Meyers wrote, “Emerging data suggest that agriculture faces a near epidemic of musculoskeletal disorders.”⁵⁸ Several studies demon-

⁵⁶ M.S. Vela Acosta and B. Lee (eds.), *Migrant and Seasonal Hired Adolescent Farmworkers: A Plan to Improve Working Conditions* (Marshfield, WI: Marshfield Clinic, 2001), p. 11.

⁵⁷ W.G. Allread et al., “Physical Demands and Low-Back Injury Risk Among Children and Adolescents Working on Farms,” *Journal of Agricultural Safety and Health* 10, no. 4 (2004), p. 257.

⁵⁸ Larry Chapman and James Meyers, “Ergonomics and Musculoskeletal Injuries in Agriculture: Recognizing and Preventing the Industry's Most Widespread Health and Safety Problem,” National Ag Safety Database, 2001, <http://www.cdc.gov/NASD/docs/d001701-d001800/d001771/d001771.pdf>.

strate that agricultural workers are among the most susceptible to musculoskeletal injuries in the United States. One study estimates that more than 60 farmworkers per 1,000 suffer from musculoskeletal disorders, with direct health care costs in excess of \$167 million.⁵⁹ The Migrant Clinicians Network also alludes to studies that indicate that musculoskeletal disorders are the chief cause of injury among farmworkers. The National Agricultural Workers Survey (NAWS) found that 24 percent of California farmworkers had suffered from at least one musculoskeletal injury in 2003 to 2004.⁶⁰

To protect child farmworkers from long-term injuries, DOL should develop federal ergonomics standards governing those farm jobs with the highest incidence of musculoskeletal disorders, such as hand harvesting, pruning, and hand weeding. The standards should provide youth farmworkers engaged in these activities with frequent breaks and limit the number of hours that children can perform these jobs. In 1997, California became the first state to implement ergonomics standards in agriculture, but other states have been slow to follow its example.⁶¹

“Emerging data suggest that agriculture faces a near epidemic of musculoskeletal disorders.”

—Larry Chapman and James Meyers, researchers

Low Wages

*Workers in Weld County, Colorado received 55 cents for a large sack of picked onions in 2005. Twelve-year-old Jesús earned less than \$3 an hour for work that most American adults would find too difficult to perform. Gabriela, 15, said that she and another family member would earn \$50 for 10 hours of work each. Since the two will pick an estimated three tons of onions during their long shift, they will earn about a half-cent a pound for the onions they harvest.*⁶²

Farmworkers are not afforded the same federal wage protections as other American workers. The minimum wage provisions in the FLSA do not cover thousands of laborers involved in certain kinds of agricultural work.⁶³ In addition, farmworkers are not entitled under the FLSA to time and one-half overtime pay.

⁵⁹ Ibid.

⁶⁰ Aguirre International, *The California Farm Labor Force Overview and Trends from the National Agricultural Workers Survey* (California: Aguirre International, 2005), <http://www.epa.gov/Region9/ag/docs/final-naws-s092805.pdf>, p. 34.

⁶¹ Occupational Safety and Health Standards Board, “Status of California’s ‘Ergonomics’ Regulation,” California Code of Regulations, Title 8-Section 5110, Repetitive Motion Injuries (RMIs) (Sacramento, CA: OSHSB, 2000), http://www.dir.ca.gov/OSHSB/ergo_stand_status.html.

⁶² AFOP, “In Colorado, Children Help Bring in the Onion Harvest,” p. 9.

⁶³ Oxfam America, *Like Machines in the Fields: Workers without Rights in American Agriculture* (Boston: Oxfam America, 2004), http://www.oxfamamerica.org/newsandpublications/publications/research_reports/art7011.html/OA-Like_Machines_in_the_Fields.pdf, pp. 39, 64. There are five minimum wage exemptions for certain kinds of agricultural workers, as follows: (1) “Man-days” exemption. Small farms that employ not more than 500 man-days in any calendar quarter in the previous year are not required to pay minimum wage. In practice, this means that most farms that employ seven or fewer employees need not pay them the minimum wage. (2) Family exemption. An agricultural employee who is the child, parent, spouse, or other member of his employer’s immediate family is not required to be paid the minimum wage. (3) Exemption for commuting pieceworkers. Hand-harvest laborers are not required to be paid the minimum wage if they are paid piece rates, provided that they commute daily from their permanent residence to the farm where they work, and that they have worked in agriculture for less than 13 weeks in the previous year. (4) Exemption for pieceworkers age 16 and under. Hand-harvest workers age 16 and under who are paid piece rates are not entitled to the minimum wage, provided that they are employed on the same farm as their parents, and that their piece rate is the same as the rate paid to workers over age 16. (5) Exemption for cowboys and shepherds. Employees principally engaged in the range production of livestock, such as cowboys and shepherds, are not required to be paid the minimum wage.



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Many child farmworkers earn less than the minimum wage for exhausting and difficult labor.

When AFOP staff visited fields in Colorado and Texas, they discovered several young farmworkers who were making approximately half the minimum wage.

In some cases, children who are entitled to the minimum wage work alongside their parents but do not receive any payment. This is particularly true when their parents are paid on a piece rate basis, whereby the amount workers earn depends on how much they plant or harvest. The parents, because of their desperate need for higher wages, allow their children to work with them so that they plant or harvest more crops and hence receive a higher rate of pay per hour worked. Where employers are aware that children are working in this way, or should be aware with any reasonable oversight of the work, the employers are required by law to pay the children for this work, even though they frequently do not do so. As an Oxfam America report points out, “agricultural employers’ ability to employ low-cost child labor (often ‘off the books’) helps to perpetuate adult farmworkers’ low rates of pay, which in turn prevents farmworkers from earning enough to afford child care or eliminate the need for their children’s income from agricultural work.”⁶⁴

Many farmers pay piece rate wages to their employees. Although growers defend these practices by pointing out that their best workers can earn more than the minimum wage through the piece rate system, it hurts slower workers who may make as little as \$2 to \$3 an hour. This is especially true for children, who are generally slower and weaker than adults, and thus earn less on average. There is also an FLSA exemption, as noted above,⁶⁵ which excludes from minimum wage protection all children aged 16 and under who are employed as hand harvesters and are paid piece rate wages if these children work on the same farm as their parents and are paid the same piece rates as older workers. When AFOP staff visited fields in Colorado and Texas, they discovered several young farmworkers who were making approximately half the minimum wage.

Congress should repeal the exemptions in the FLSA that deny minimum wage protection to hired farmworkers. Moreover, the DOL’s Wage and Hour Division should step up its enforcement efforts to ensure that all farmworkers who are entitled to the minimum wage actually receive it. DOL should also make sure that notices of employees’ rights to the minimum wage are clearly posted in agricultural workplaces.

⁶⁴ Ibid., p. 40.

⁶⁵ See footnote 63 above.

3 ♦ Child Farmworkers and Education

Doricela started working in orchards at the age of 12 to provide extra income for her family. When that was not enough, she dropped out of high school and took two jobs to help support her single mom and five siblings.⁶⁶

THE BURDEN OF FARM WORK OFTEN HAS NEGATIVE consequences on child farmworkers' education. Child farmworkers may not attend school regularly and often fall behind in their studies due to long work hours. Farmworker children have lower school enrollment rates than any other group in the United States.⁶⁷ Of those farmworker youth who do enroll, at least 45 percent never complete high school.⁶⁸ Student Action with Farmworkers (SAF) argues that closer to 60 percent of migrant students drop out of school.⁶⁹ In some farmworker communities, four out of five migrant children do not graduate.⁷⁰ In 2000, Human Rights Watch interviewed dozens of child farmworkers, and all of them reported having dropped out of school or not passing a grade at least once.⁷¹ Child farmworkers may attend three to five different schools per year as they migrate within the United States with their families.⁷² Many farmworker families migrate from the Rio Grande Valley to the Midwest and West, while others leave Florida for states throughout the Southeast, Northeast, and Midwest. This mobility disrupts schoolwork, inhibits social integration, and causes migrant children to miss class.

⁶⁶ Paraphrased from AFOP, "Washington State's OIC Helps Former Child Farmworker Aim High," *Washington Newline* 24, no. 6 (2006), p. 13.

⁶⁷ Child Labor Coalition, "Children in the Fields Campaign Fact Sheet" (Washington: CLC, n.d.), <http://www.stopchildlabor.org/Consumercampaigns/fields.htm> (Citing "Migrant Education: A Consolidated View," Interstate Migrant Education Council, 1987).

⁶⁸ Ibid. (Citing the Migrant Attrition Project, Testimony before the National Commission on Migrant Education, February 1991).

⁶⁹ Student Action with Farmworkers, "United States Farmworker Fact Sheet" (Durham, NC: Student Action with Farmworkers, n.d.), <http://cfs.aas.duke.edu/saf/pdfs/fwfactsheet.pdf>.

⁷⁰ AFOP, "In Colorado, Children Help Bring in the Onion Harvest," p. 11.

⁷¹ Human Rights Watch, p. 48.

⁷² Yolanda G. Martinez et al., "Voices from the Field: Interviews with Students from Migrant Farmworker Families," *The Journal of Educational Issues of Language Minority Students* 14 (Winter 1994), <http://www.ncela.gwu.edu/pubs/vol14/martinez.htm>.

“I think the worst part of working in the fields is that you know you’re always going to be behind. You get your credits back this year [by doing extra work], but next year it’s going to be the same thing.”

—Elda Hernandez,
former child
farmworker

In addition to the challenges imposed by farm work and migration, many child farmworkers face language and cultural barriers that further impede their educational development. Former child farmworker Elda Hernandez summed up the obstacles that she had to confront: “I think the worst part of working in the fields is that you know you’re always going to be behind. You get your credits back this year [by doing extra work], but next year it’s going to be the same thing.”⁷³ Unfortunately, many of the studies on the impact of farm work on children’s education are at least 15 years old, demonstrating a vital need for new research on this underserved population.

The results of these educational challenges for children are evident among the adult farmworker population. The average farmworker does not continue schooling past the sixth-grade level⁷⁴ and 80 percent of the adult migrant farmworker population functions at a fifth-grade literacy level or lower.⁷⁵ Although farmworkers realize the importance of education in improving their children’s chances of leaving farm work for other occupations with higher earnings, adult farmworkers’ low educational attainment has impacted their

families. Economic necessity obliges them to rely on their children’s labor for extra income, disrupting the children’s education and increasing their likelihood of working in low-skill and low-pay occupations such as farm work when they become adults.

The U.S. Department of Education has an Office of Migrant Education (OME) that administers several programs targeted to the children of migrant and seasonal farmworkers. These programs strive to break the cycle of poverty by providing migrant students with educational opportunities as well as financial and logistical support. OME oversees four principal programs: Title I, Part C Migrant Education Program (Title I MEP), College Assistance Migrant Program (CAMP), High School Equivalency Program (HEP), and Migrant Education Even Start (MEES). In the Title I MEP, the Department of Education distributes funds to states, which then ensure the delivery of services to children when they reside within that state. Since migrant children often attend schools in several states, states are required to coordinate with other states in the provision of services. Title I MEP funds support high-quality education programs for migrant students that meet their special needs and ensure that they receive the same quality of education that other students enjoy.

For CAMP and HEP, the Office of Migrant Education provides funding to public and private agencies through competitive grants. CAMP provides funding for migrant and seasonal farmworkers (or their children) who are enrolled in their first year of college. During that first year, students can also receive housing assistance, health services, tutoring, and other related services. HEP helps migrant children, who are 16 years old or older and not enrolled in school, obtain their

⁷³ AFOP, “Yakima Valley Youth Look Toward College,” *Child Labor Bulletin* 1, no. 2 (2002), p. 11.

⁷⁴ See CLC, “Children in the Fields Campaign Fact Sheet,” and SAF, “United States Farmworker Fact Sheet.”

⁷⁵ CLC, “Children in the Fields Campaign Fact Sheet,” (citing U.S. Department of Education, “The Education of Adult Migrant Farmworkers”).

high school equivalency diploma and pursue vocational training or postsecondary education. MEES involves the parents of migrant children in the educational process through family literacy programs that are run in local areas.

The Office of Migrant Education served more than 488,000 children during the 2003–04 school year.⁷⁶ Thousands of farmworker children stay in school, pass the General Educational Development test (GED), attend college, or receive other services such as family literacy as a result of the programs provided by the Office of Migrant Education. These programs have enabled many migrant children to realize their dream of becoming teachers, doctors, lawyers, and scientists. Nevertheless, OME's budget currently allows it to serve just 54 percent of the eligible children.⁷⁷ Although OME does not have national statistics on migrant dropout rates, it recognizes that migrant children continue to face enormous economic and social obstacles that impede them from earning a high school diploma. In spite of the fact that counting migrant children is a daunting task, migrant education advocates have urged OME to fund a study on migrant dropout rates. OME has recently implemented a records transfer program after a ten-year hiatus, which should improve interstate coordination and might provide better data on graduation and dropout rates.

In addition to Migrant Education programs, a small amount of funding for farmworker youth was generated through a set-aside from the Youth Opportunity Grants program authorized by the Workforce Investment Act of 1998 (WIA). The \$10 million annually supported in-school services and vocational training for those who were in danger of dropping out or unable to return to school. Several AFOP member agencies and three other organizations operated the youth program in 31 states and Puerto Rico. The program served thousands of farmworker youth by combining income supplements to help families replace their children's earnings with targeted educational services that kept migrant youth in school and helped others earn GED certificates. However, the program ceased on December 31, 2004, a victim of social spending cuts by the Bush Administration.

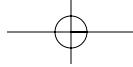
Congress should restore and expand funding for the farmworker youth program to encourage migrant children to remain in school. Stricter child labor laws in agriculture and increased enforcement would also help reduce the number of children working in the fields and allow them to complete their education. Congress should increase funding for the programs administered by



Norma Flores, pictured here with AFOP Executive Director David Strauss (left) and former LULAC President Hector Flores, participated in the farmworker youth program. She earned a college degree in communications.

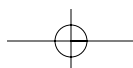
⁷⁶ Information provided to AFOP by the U.S. Department of Education, Office of Migrant Education, February 2007.

⁷⁷ Ibid.



the Office of Migrant Education (Title I MEP, HEP, CAMP, and MEES) so that it can effectively serve all eligible migrant children. Increased funding will enable OME to provide a higher quality of services and boost its services for high school students, who can be especially difficult to serve due to pressures to support their families economically. The reauthorization of the No Child Left Behind Act (NCLB) is underway. Title I MEP and MEES should be included in the reauthorization package and changes should be made to improve the effectiveness and simplify the administration of the programs.⁷⁸

⁷⁸ HEP and CAMP are in the Higher Education Act, which will be reauthorized before the NCLB in 2007.



4 ♦ U.S. Child Labor Policy in Agriculture: Exemptions and Lax Enforcement

IN THE UNITED STATES, THE PRIMARY FEDERAL LEGISLATION governing child employees, including those in agriculture—the FLSA—dates back to 1938. (The FLSA not only has child labor provisions, but also minimum wage, overtime pay, and equal pay provisions for adults.) In the past 70 years, this law has proved inadequate in protecting child farmworkers from long hours, low pay, and dangerous work.

Congress has enacted other laws since 1938 specifically designed to protect farmworkers, such as the Farm Labor Contractor Registration Act of 1963 (FLCRA) and the Migrant and Seasonal Agricultural Worker Protection Act of 1983 (AWPA). FLCRA regulated farm labor contractors (middlemen who supply workers to agricultural employers), but because FLCRA did not apply to agricultural employers, it did little to alleviate the low pay and hazardous working conditions in U.S. agriculture. AWPA replaced and expanded upon FLCRA so that anyone who actually employs farmworkers—whether individual growers, associations of growers, or farm labor contractors—is responsible for ensuring proper wages and working conditions for their employees.⁷⁹ DOL's Wage and Hour Division is responsible for enforcement of the FLSA and AWPA.

The child labor provisions of the FLSA have far less protective provisions for children working in agriculture than for children working in all other industries. For example, the FLSA establishes a minimum age at which children can work in jobs that the Secretary of Labor has determined to be particularly hazardous. In agriculture, that minimum age is 16, whereas in all other industries the minimum age is 18. Even in those occupations that have not been determined to be particularly hazardous, there are fewer protections in agriculture.

The child labor provisions of the FLSA have far less protective provisions for children working in agriculture than for children working in all other industries.

⁷⁹ Oxfam America, p. 40.

In these non-hazardous occupations, for instance, the standard minimum age in agriculture is 14, whereas the standard minimum age in all other industries is 16.

Moreover, there are many exceptions to the age 14 minimum in agriculture, but there are far fewer exceptions to the age 16 minimum in all other industries. In agriculture, to give but three of many examples, children of any age less than 12 years old can work with the consent of a parent on small farms; children 12 and 13 years old can work with the consent of a parent on any farm of any size; and children as young as ten years old can hand-harvest certain short-season crops. There is no restriction on how many hours a day or a week these children can perform this work, nor is there any restriction on how early in the day they can start or how late they can finish, except that the children cannot work during school hours. In field investigations, AFOP found young children working up to 12 hours a day in hot, difficult, and sometimes dangerous conditions.⁸⁰ For non-hazardous work outside of agriculture, the protections are much more stringent. One exception to the standard minimum age of 16 in this context applies to children aged 14 and 15 in certain limited occupations in retail, food service, and gasoline service businesses. Children in such jobs are also subject to hour restrictions, as follows: They cannot work more than three hours a day or more than 18 hours a week when school is in session, and when school is not in session they cannot work more than eight hours a day or more than 40 hours a week. Moreover, they cannot work before 7 am or after 7 pm (9 pm in the summer).⁸¹ None of these restrictions exists in agriculture.

Recent data indicate that DOL needs to step up its efforts to ensure that even these weak laws relating to child farmworkers are more vigorously enforced. DOL's Wage and Hour Division carried out 1,784 child labor investigations in Fiscal Year 2005, the lowest number of investigations in at least a decade.⁸² Furthermore, despite agriculture's ranking as one of the three most dangerous industries in the United States, in FY 2005 DOL conducted only 25 investigations of agricultural employers, a mere 1.4 percent of the total number of investigations.⁸³ DOL's failure to more fully investigate child labor in agriculture means that countless violations go undiscovered. In two of its three site visits, AFOP found children under 12 working in the fields in apparent violation of FLSA standards.

Farmworker advocates have pointed to the inadequate number of investigators focusing on child labor. Over the last decade, state labor surveys demonstrate that most states lack the resources needed to effectively enforce child labor laws, which is evident in the dwindling number of enforcement officers and the low numbers of child labor investigations. The Child Labor Coalition has questioned DOL's investigative practices, which emphasize child labor investigations in industries with the greatest number of children working in them (such as retailing, especially restaurants and grocery stores), thereby greatly slighting industries with a much higher incidence of deaths and injuries to children, such as agriculture.⁸⁴ Child farmworkers are already

⁸⁰ See AFOP, *Washington Newswire* 24, no. 6 and *Child Labor Bulletin* 1, no.2.

⁸¹ There are three other exemptions outside of agriculture that permit certain children under age 16 to work: (1) Child actors and performers, (2) children engaged in the delivery of newspapers to the consumer, and (3) children working at home to make evergreen wreaths.

⁸² CLC, *Protecting Working Children in the United States: The Government's Striking Decline in Child Labor Enforcement Activities* (Washington: CLC, 2006), p. 1.

⁸³ *Ibid.*, p. 3.

⁸⁴ CLC 2005, p. 21.

at a greater risk of injury and death than virtually all other children working in the United States, and DOL's lax approach to enforcement in agriculture increases their vulnerability.

Several human rights organizations—Human Rights Watch, the Child Labor Coalition, and Oxfam America—have criticized the United States government for failing to comply with international child labor treaties, with special emphasis on child labor in agriculture. On December 2, 1999, President Clinton signed International Labor Organization (ILO) Convention 182, which required the United States and the many other ILO member states who agreed to it to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.”⁸⁵ In 2005, the CLC issued a report calling into question the U.S. government's compliance with this requirement, particularly in light of the failure to enforce vigorously the child labor protections for children in agriculture.⁸⁶



Cristina, 9, works in apparent violation of federal child labor regulations, but DOL's weak enforcement does little to discourage this practice.

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⁸⁵ International Labor Organization, *Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, Convention 182, Geneva, adopted 17 June 1999, <http://www.ilo.org/ilolex/english/convdisp1.htm>.

⁸⁶ *Ibid.*, Article 3. The CLC report can be found at <http://www.stopchildlabor.org/pressroom/clc%20report.pdf>.

5 ♦ Proposed Legislation

RECENTLY, ATTEMPTS HAVE BEEN MADE TO CORRECT the inequalities in U.S. child labor laws. Two bills introduced in the 109th Congress would have extended the same protections to child farmworkers that are accorded to other working youth. These are the Youth Worker Protection Act (YWPA) and the Children's Act for Responsible Employment (CARE Act). The bills were not enacted and expired on December 31, 2006, with the end of the 109th Congress, but advocates expect that they will be reintroduced in the 110th Congress. This section summarizes the key points of both bills and their potential impact.

Youth Worker Protection Act

Representative Tom Lantos (D-CA) introduced the Youth Worker Protection Act (YWPA) on behalf of 26 members of Congress on June 13, 2005. The bill sought to amend the Fair Labor Standards Act to reform the provisions relating to child labor. The YWPA called for stricter requirements for the employment of minors, including:

- ♦ Prohibiting children under 18 in any industry, including agriculture, from performing particularly hazardous work.
- ♦ Limiting work for 16- and 17-year-olds as follows:
 - no work before 7 am;
 - no work after 10 pm on a day before a school day or after 11 pm on any other day;
 - no more than four hours on a school day or eight hours on any other day;
 - no more than 20 hours during a school week or more than 40 hours when school is not in session;
 - no more than six consecutive days.⁸⁷

⁸⁷ The restrictions on minors aged 14 or 15 are stricter than those listed above. For more information, please see the Youth Worker Protection Act bill at <http://www.govtrack.us/congress/bill.xpd?bill=h109-2870>.

- ◆ Stipulating civil penalties of between \$500 and \$15,000 per employee for violators of the law, except that a violation that results in serious injury or death would have a \$15,000 minimum and a \$50,000 maximum fine, and a repeat or willful violation would have a \$15,000 minimum and a \$100,000 maximum fine.
- ◆ Calling for criminal penalties of up to three years of imprisonment for the first offense and three to five years for repeat violations.
- ◆ Requiring the Department of Labor to adopt, with only a few exceptions, all of the recommendations in the NIOSH report of May 2002 for updating and strengthening child labor protections in particularly hazardous jobs.
- ◆ Requiring the Department of Labor to review every five years all of its restrictions on particularly hazardous employment to assure that they are current and effective, and also to consider imposing restrictions on certain jobs that are not currently restricted, such as those requiring repetitive bending, stooping, twisting, and squatting.



Reid Maki

The CARE Act and the YWPA would protect children like Azucena, 12, from working at such a young age.

Children's Act for Responsible Employment

Representative Lucille Roybal-Allard (D-CA) introduced the Children's Act for Responsible Employment (CARE Act) in the U.S. House of Representatives on July 27, 2005. Similar to the YWPA, the CARE Act sought to amend the FLSA by setting the same age and work standards for children working in agriculture that already exist in all other industries. The main provisions of the bill would:

- ◆ Set 18 as the minimum age for particularly hazardous work in all industries, including agriculture.
- ◆ Increase the standard minimum age for child farmworkers from 14 to 16, with only two exceptions: (1) children under age 16 would be permitted to work on their parents' farms, so long as the work is done outside of school hours, and (2) children 14 and 15 years old would be permitted to work in jobs other than mining and manufacturing under such conditions as are determined by the Secretary of Labor not to interfere with their schooling or their health and well-being.
- ◆ Increase maximum civil fines for child labor violations from \$10,000 to \$50,000, with a minimum penalty of \$500; and impose criminal penalties in certain aggravated cases to a maximum of five years in prison.
- ◆ Require greater data collection and an annual report on domestic child labor.
- ◆ Authorize 100 additional inspectors in DOL's Wage and Hour Division to conduct child labor investigations.

- ◆ Strengthen pesticide exposure regulations to better protect children working in agriculture.
- ◆ Amend the Workforce Investment Act of 1998 to provide at least \$10 million annually for farmworker youth programs.⁸⁸

The Potential Impact of the YWPA and CARE Act

The YWPA and CARE Act would bring child labor standards in agriculture in line with those in other industries. They would protect children by toughening child labor laws, improving enforcement activities, imposing harsher fines on employers who break the law, and increasing public accountability through compulsory reviews of domestic child labor and the health impact of child labor.

Nevertheless, improved child labor standards will not reduce poverty among the farmworker population as long as farmworkers are denied a living wage for the labor they perform. If farmworkers earned a living wage, then they would be less likely to encourage or allow their children to work in the fields. The abundance of child farmworkers supports a wage system that drives down the economic earning power of adult workers. Farmworkers' wages have remained stagnant for many crops over several decades, even when crop prices have increased. In addition, Congress has cut funding for farmworker youth programs at a time when these programs are needed most.

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As a result of Congress' inaction, coupled with poor enforcement of existing laws by the executive branch, hundreds of thousands of child farmworkers will continue to risk dangerous working conditions to help make ends meet for their families. The United States continues to take the lead in decrying global child labor, yet it permits the practice to endanger youth within its own borders.



Robin Romano

The federal government needs to increase protections for children working in the fields.

⁸⁸ See <http://www.theorator.com/bills109/hr3482.html> and <http://www.stopchildlabor.org/pressroom/care.htm>.

6 ♦ A Call to Action: Federal Legislation, Regulatory Enforcement, and Research

THE U.S. GOVERNMENT MUST ACT SWIFTLY TO PROTECT child farmworkers from dangerous and exploitative labor that has long-term adverse consequences for their physical and mental development. All children should have the right to enjoy their childhood. It is imperative that U.S. law be revised to ensure that this right is extended to child farmworkers. Some states have passed legislation raising minimum age limits for farm work, tightening restrictions on hazardous labor, and reducing the amount of hours that children can work daily and weekly.⁸⁹ State action may generate the momentum and political will needed to produce changes in federal child labor laws.

Better legislation, however, is not enough. Many more inspections, increased attention devoted to the agricultural sector, and stiffer fines will help deter growers and labor contractors from using illegal child labor on their farms and in their orchards. Better data will help policy makers, advocates, and service providers protect child farmworkers from health and safety dangers, increase their educational and vocational opportunities, and educate the public about the issue.

Poverty is the driving force for much child labor in agriculture. It could be argued that the income earned by child farmworkers ensures the survival of thousands of migrant families. This responsibility, however, should not fall on the shoulders of children. AFOP believes that the long-term consequences—health, educational, social, and vocational—of child labor outweigh any short-term economic rewards. Therefore, AFOP promotes a child labor policy that, insofar as possible, keeps children out of the fields and in the classroom. This involves not only stricter child labor laws and more spending on migrant education and vocational training programs for farmworker children, but also increased wages for adult farmworkers to eradicate the need for their children's labor.

⁸⁹ For more information on state child labor laws for agricultural employment, please visit the DOL Employment Standards Administration page: <http://www.dol.gov/esa/programs/whd/state/agriemp2>.

Throughout this report, AFOP has recommended actions to address the causes and consequences of child labor in agriculture. This section outlines those recommendations in three categories: federal legislation, regulatory enforcement, and research.

Federal Legislation

Policy makers on Capitol Hill must make protecting child farmworkers a national priority. Almost 70 years have passed since the enactment in 1938 of the Fair Labor Standards Act, but the double standards within that law continue to endanger almost half a million child farmworkers in the United States. Based on the conclusions of each section of this report, AFOP makes the following recommendations to the U.S. Congress:

- ◆ *End the double standard that permits young children to work in agriculture.* Establish the minimum working age in agriculture at 14 with no exceptions (other than retaining the exemption for family farms), increase the age for performing hazardous labor to 18, and establish stricter limits on the number of hours that youth under age 18 can work per week. The same standards in other industries should be applied to agriculture. (See the Appendix for a comparison of child labor laws in agriculture versus non-agricultural sectors.)
- ◆ *Restore and expand funding for the farmworker youth program.* Congress should reestablish the program and increase its funding from previous annual levels of \$10 million to \$20 million to better serve America's migrant youth population.
- ◆ *Increase funding for the programs administered by the Office of Migrant Education.* Congress should raise funding levels for OME programs in order to serve all of the eligible migrant children in the United States. The Title I MEP and MEES should also be included in the No Child Left Behind reauthorization package. Eligibility requirements and administrative procedures should be simplified. Funding should follow where the children are, and the new records transfer program must be implemented efficiently and effectively.
- ◆ *Increase the minimum wage and amend the FLSA to ensure that minimum and overtime wage provisions cover all farmworkers with no exceptions.* Farmworkers should be guaranteed a decent wage and be provided with benefits, including health care. If farmworker adults earned more, fewer children would end up working in the fields.

Regulatory Enforcement

The U.S. Department of Labor and the Environmental Protection Agency have a responsibility to protect children from health and safety hazards in the workplace. Both agencies are failing to fulfill their obligations to children working in the fields. AFOP offers the following recommendations to DOL and the EPA.

To the U.S. Department of Labor:

- ◆ *Increase the number of Wage and Hour Division staff devoted to uncovering child labor violations in agriculture.* Compliance officers must devote more time to enforcing child labor standards. In addition, DOL should change its inspections policy to target industries with the highest incidence of deaths and injuries, since these sectors pose the greatest danger to youth workers. Finally, DOL should always conduct surprise child labor investigations, so that employers do not have the opportunity to conceal violations.
- ◆ *Increase the monetary value of fines for child labor violations.* Currently, the maximum penalty for a child labor violation is \$11,000. However, DOL levied an average fine of only \$1,011 in FY 2005⁹⁰, which is just 9.2 percent of the total penalty allowed. Such a small amount provides little incentive to employers to comply with child labor laws.
- ◆ *Implement the NIOSH recommendations to strengthen child labor Hazardous Orders (HOs) in agricultural and non-agricultural employment.* In 2002, NIOSH recommended 38 changes to HOs. To date, DOL has made only four changes to the existing HOs, none of which affects agricultural workers. DOL's failure to implement these recommendations endangers millions of working children in the United States.
- ◆ *Require that all farmworkers receive training on how to protect themselves from heat stress, dehydration, and skin cancer.* Working long hours in blistering temperatures makes farmworkers extremely vulnerable to heat stress, dehydration, and skin cancer. Children are especially susceptible, since they may not recognize the warning signs or may wear less protective clothing. Compliance officers should have the power to levy fines on growers whose employees have not undergone training.
- ◆ *Provide federal ergonomics standards that prevent children from developing musculoskeletal disorders resulting from extremely difficult tasks such as hand harvesting, pruning, and hand weeding.* These standards should regulate the number of hours that children can perform these jobs and how often they receive breaks.

To the U.S. Environmental Protection Agency:

- ◆ *Protect farmworker youth from pesticides by developing a reentry interval (REI) for children.* The revised REI should take into account children's lower body weight, their ongoing physiological development, and their greater vulnerability to toxins. Fines should be especially steep for employers who put children at risk of pesticide exposure in violation of the revised REI.

⁹⁰CLC 2006, p.5.

- ◆ *Ensure that pesticide safety training reaches all farmworkers, including farmworker children.* Despite EPA requirements, many farmworkers fail to receive pesticide safety training. Uneven enforcement and low monetary penalties have not persuaded growers to provide their workers with this vital service. The EPA should complement increased enforcement with expanded outreach efforts. Because children often play in or near fields that have been sprayed with pesticides, they should also be educated about the potential dangers of coming into contact with these toxins.

Research

This report has cited several studies that are more than ten years old, simply because more current research does not exist. There is a gap in research on migrant and seasonal farmworkers in general, but the need for new research on farmworker youth is especially urgent. AFOP believes the following recommendations would provide a stimulus for better child labor legislation and enforcement.

To the U.S. Department of Labor:

- ◆ *Include a separate section on child labor in the National Agricultural Workers Survey.* The NAWS gathers demographic and employment characteristics on the U.S. agricultural labor workforce. It should collect the same information on child farmworkers.

To the Office of Migrant Education:

- ◆ *Fund a national study on migrant dropout rates.* Most studies on migrant dropout rates are more than a decade old. A new study would help advocates better understand the educational challenges that migrant children face and could improve OME's service delivery to this vulnerable population.

To public and private agencies:

- ◆ *Dedicate more resources to funding research on child farmworkers.* Updated research and ongoing monitoring will help improve protections and services for youth farmworkers. Better data is needed on the number of children engaged in agricultural work, their ages, the types of crops they harvest, the amount of hours they work, their health outcomes, and the impact on their education.

◆ Conclusion

TEN-YEAR-OLD MARIELA BEGINS HER DAY AT 4:30 AM, joining her father aboard a bus that will take them to onion fields. She works all day without complaint, sweat glistening on her face as the sweltering heat takes its toll. Her back aches from bending over and her wrists tighten up as she cuts onions with her adult-sized scissors. She exposes herself to pesticides, heat exhaustion, and unsafe equipment. Mariela is paid below minimum wage for her hard labor.

Almost half a million children continue to work in America's fields and orchards. They perform backbreaking labor in hazardous conditions to provide consumers with a steady supply of fruits and vegetables. In a country that has taken the lead globally in promoting labor rights, it is shameful that federal laws and lax enforcement permit dangerous child labor in agriculture to persist.

This report's recommendations would correct the inequity in U.S. child labor laws, protect child farmworkers from harmful exposure to hazardous machinery and pesticides, and ensure that they receive the same educational opportunities that other American children enjoy. It is imperative that these steps are taken to break the cycle of poverty and give these children the opportunities they deserve.

For updated information and opportunities to take action, please visit www.afop.org/childlabor.htm or www.stopchildlabor.org.



Reid Maki

Child labor in agriculture will continue to be an American problem until federal policymakers make protecting child farmworkers a national priority.

◆ Glossary

AFOP	Association of Farmworker Opportunity Programs
AWPA	Migrant and Seasonal Agricultural Worker Protection Act of 1983
BLS	U.S. Department of Labor, Bureau of Labor Statistics
CAMP	College Assistance Migrant Program
CARE Act	Children's Act for Responsible Employment
CLC	Child Labor Coalition
DOL	U.S. Department of Labor
EPA	U.S. Environmental Protection Agency
FLCRA	Farm Labor Contractor Registration Act of 1963
FLSA	Fair Labor Standards Act
GAO	General Accounting Office (formerly); Government Accountability Office (currently)
GED	General Educational Development
HEP	High School Equivalency Program
HO	Hazardous Order
HRW	Human Rights Watch
ILO	International Labor Organization
MEES	Migrant Education Even Start
NASS	National Agricultural Statistics Service
NAWS	National Agricultural Workers Survey
NCLB	No Child Left Behind Act
NIOSH	U.S. Dept. of Health and Human Services, National Institute for Occupational Safety and Health
OME	U.S. Department of Education, Office of Migrant Education
OSHA	U.S. Department of Labor, Occupational Safety and Health Administration
PANNA	Pesticide Action Network North America
REI	Reentry Interval
ROPS	Rollover Protective Structures
SAF	Student Action with Farmworkers
Title I MEP	Title I, Part C Migrant Education Program
UFW	United Farm Workers of America
UV	Ultraviolet
WIA	Workforce Investment Act of 1998
YWPA	Youth Worker Protection Act

◆ Appendix: FLSA Protections for Children

Youth working in agriculture do not receive the same protections provided to other working youth under the Fair Labor Standards Act.

IN AGRICULTURE:

- Children can perform particularly hazardous work starting at age 16.
- Children can work unlimited hours outside of school hours.
- The standard minimum age for being able to do any work is 14.
- There are many exceptions to the standard minimum age. As a result, many children even younger than 12 are permitted to work in the fields, with no restrictions on hours except that they cannot work during school hours.
- Children who work more than 40 hours per week are not entitled to overtime pay.
- Children are exempt from minimum wage provisions in certain cases.

IN NON-AGRICULTURAL OCCUPATIONS:

- Children cannot perform particularly hazardous work until age 18.
- Children have strict limits on the amount of time they can work outside of school hours.
- The standard minimum age for being able to do any work is 16.
- There are few exceptions to the standard minimum age. As a result, most children under age 16 who work are 14- and 15-year-olds in retailing, with strict limits on hours, such as not more than 3 hours on a school day and not more than 8 hours on a non-school day.
- Children are not allowed to work more than 40 hours per week.
- Children are required to be paid the minimum wage.

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