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# Volunteering

Vol. 1, No. 7 (1980?)

## The Application of Child Labor Laws to Volunteer Workers

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### Introduction

The child labor laws were enacted in response to the growing concern of citizens' groups over the abuse and exploitation of children in the labor force. Groups such as the National Child Labor Committee lobbied for child labor regulations. Reform occurred slowly, but by 1938, with the passage of the Fair Labor Standards Act, child labor provisions preventing the employment of children in dangerous occupations, in unhealthy industrial environments, for long hours at low wages, were being seriously enforced.

With the advent of the National

Labor Relations Act of 1935, other legislation, and changing economic conditions during World War II, all of which gave the labor force new bargaining power, many of the dangerous working conditions which had served as an impetus to the child labor reforms were eliminated, and a need for more laborers in the work force led to a movement for less restrictive child labor laws.

The movement for more lenient child labor laws continues today in response to a growing concern over youth unemployment with its resultant waste of skills and productivity and increase in juvenile delinquency. Employers are reluctant to hire minors when faced with child labor laws restricting hours of work, age, placement of minors on certain jobs, and requiring employment permits, and periodic inspections by child labor inspectors, and criminal penal-

ties for noncompliance. Federal and state legislation, the unionization of workers, corrective bargaining agreements, all serve to control minimum wages, working conditions, and hours of work for all employees of all ages, thereby making many of those burdensome restrictions under the child labor laws unnecessary.

Each state has a child labor statute, and a number of basic provisions are commonly found in the state statutes. Most state child labor statutes require that a child be of a minimum age before he or she may be legally employed. Usually, there is a minimum age at which a minor may be employed outside of school hours, i.e., part-time, and a minimum age at which a minor may be employed during school hours, or full-time. The minimum age for full-time work often coincides with the

compulsory school attendance age in many states, while the minimum age for part-time work after school hours or during school vacations varies from state to state. State statutes also prescribe maximum hours of work for minor employees: about half the states permit children under 16 to work 40 hours per week at full-time jobs; the other states allow children under 16 to work for longer hours or have no limit. The maximum hours for part-time work for minors vary from state to state. One of the most common child labor provisions is the prohibition of certain occupations for minors. All the states restrict the employment of children in potentially hazardous occupations, such as work with power-driven machinery, manufacturing of dangerous chemical substances, excavating, work on railroads and motor vehicles. A number of states also prohibit the employment of minors in jobs or places injurious to one's moral welfare, such as pool rooms, bars, etc. Another fairly common state child labor provision is the minimum age requirement for minors engaging in "street trades." A typical statute will not permit minors below a certain age to engage in selling, distributing, or offering for sale newspapers, magazines, handbills or circulars, or to work in any other trade, such as boot-blacking, in any public place or street. The minimum ages range from 9 to 16, depending on the state. Most states require employers of minors to have on file an employment certificate for each minor. A minor may obtain an employment certificate from the Board of Education or his school by personally submitting to the issuing officer a promise of employment by the prospective employer, proof of age, a school record, and a statement by a physician as to his or her physical fitness. The employment certificate itself, containing name, address, date and place of birth, and description of the minor, among other items, thus

serves to verify the age of any minor employee. Finally, many state statutes provide that certain occupations, which are generally nonhazardous, are exempt from the child labor laws. The exempted occupations typically include agricultural and domestic work, work for a parent's business, errand and delivery work, and work as a performer in the theater or on TV and radio or as a model.

### **Application of the child labor laws to volunteer organizations and workers**

Only two states provide for blanket exemptions of volunteer workers from the child labor laws. Iowa's child labor statute provides that nothing in Iowa Code Annotated, section 92.1 et seq., shall be construed to prohibit "any part-time, occasional, or volunteer work for nonprofit organizations generally recognized as educational, charitable, religious, or community service in nature." (§92.17). Maryland's statute, Annotated Code of Maryland, Article 100, section 4(c) (4), defines the terms "employ," "employed," and "employment" as used in the statute as including "to suffer or permit to work" but not "work performed by nonpaid volunteers in a charitable or nonprofit organization employed with the written consent of parent or guardian." It thus appears that in both Iowa and Maryland volunteer workers and the charitable or nonprofit organizations which employ them or use their services are not subject to the child labor laws.

In Hawaii, a minor employed by any religious, charitable, or nonprofit organization in employment which is exempt, as prescribed by the director of labor and industrial relations by rule or regulation, is not subject to the state child labor laws under section 390-5(5) of Hawaii's revised statutes. By implication, one might conclude that volunteer work,

which fits into the "exempt employment" category, for such organizations would be exempt from the child labor regulations too.

A few states provide that certain types of volunteer work are not subject to the child labor provisions. For example, New York Labor Law, section 133(1) (d), prohibits the employment of minors under 16 in mental health institutions but provides that participation in recreation activities or entertainment or providing companionship as part of an organized volunteer program, approved by the commissioner of mental hygiene, in such institutions shall not constitute employment and may be performed by volunteers at least 14 years of age. Section 48.3 of title 43 of Pennsylvania's Statutes Annotated provides that minor volunteers of volunteer fire companies, ambulance corps, rescue squads, and forest fire crews are exempt from the child labor laws and may engage in all training activities, first aid, and food services, and those who have completed the training course may aid the regular crews under close supervision.

Since most of the state statutes regulating child labor neither specifically mention volunteer workers or organizations nor discuss the applicability of the child labor laws to volunteers, it is necessary to examine judicial and state official interpretations of the law to determine whether volunteer workers are exempt from child labor regulations.

There are very few cases in this area, and the few which do exist must be confined in their application and interpretations of the child labor laws to narrow factual situations. A couple of cases deal with the distribution of religious materials on the street by minors under the minimum age for engaging in street occupations. A Michigan case, *People v. Ciocarlan*, 317 Mich. 349, 26 NW ad 904(1947), court denied 332U.S. 758, held that such minors were within the city's street trades ordinance

prohibiting children under 12 from distributing materials on the street, even though the children received no compensation. On the other hand, a New Hampshire case, *State v. Richardson*, 92N.H.178, 27A.2d 94(1942) held that such activity was not work and did not come under the street trades law. The Michigan case may indicate that minor volunteers who distribute materials on the street for their organizations are subject to the minimum age requirement; the New Hampshire case may indicate the opposite result. A few cases have held that minors may perform in nonprofit, amateur exhibitions without violating the child labor prohibition against employing children in theaters. *Taylor v. State*, 112 Neb. 112, 199 NW2d 22(1924), held that a theater proprietor could allow children to put on a voluntary exhibition of singing and dancing without compensation. Similarly, a Pennsylvania court ruled in *Commonwealth v. McKaig*, 29 D&C 629(1937) that a 9-year-old child could give a skating performance at a nonprofit amateur skating meet where she received no compensation therefor.

One aid in determining the applicability of the child labor laws to volunteer workers is the interpretation of the regulations by the state attorney general. For example, the Attorney General of Connecticut indicated in a 1946 opinion (24 Op. Atty.Gen.232) that voluntary work in hospitals by girls between 14 and 16 years old was not prohibited by the law prohibiting employment of minors under 16 in a mercantile establishment since hospitals are not commercial establishments. By implication, it would appear that voluntary work by minors in any noncommercial establishment should be exempt from the child labor laws. An October 26, 1976 opinion by the New York Attorney General stated that minors may serve as volunteer helpers with a volunteer ambulance service orga-

nized as a nonprofit operation for the benefit of the community. Minors working for such a service are thus exempt from the New York Labor Law prohibition against the employment of a minor of any age as a helper on a motor vehicle. (However, the opinion noted that under New York's Education Law, the use of a volunteer under 16 as a helper on an ambulance could violate the prohibition against the employment of minors under 16 in dangerous occupations.) In an opinion by Indiana's Attorney General, children under 16 appearing as performers in a singing and dancing act in a theater without compensation were exempt from section 22 of the 1921 Child Labor Act proscribing the employment of minors under 16 in any theatre. (1927-28Op.Atty.Gen.-340).

For some states which are void of cases and official opinions in this area of the law, it may be possible to imply an exception from the child labor regulations for volunteers by means of statutory construction. A number of state statutes define the term "employment" as used in the child labor provisions as "service or any occupation engaged in for compensation, money, or other valuable consideration, whether paid to the minor or some other person." Many states with a certification system require certificates for minors to work "in any gainful occupation." Similarly, a number of states provide that the minimum age restrictions are for employment in "any gainful occupation." Thus, it appears that the provisions of the child labor laws apply to workers receiving compensation for their services, and possibly, one can imply that volunteers would not be subject to the child labor regulations.

### Conclusion

The child labor laws were enacted to prevent the abuse and exploitation of child workers in environments hazardous to their

physical health and moral well-being. Today, federal and state legislation, the unionization of workers, and collective bargaining agreements have established minimum wage and hour controls and standards for safe working conditions, eliminating the need for many of the restrictions originally set up under the child labor laws. Recognizing the youth unemployment problem, state legislatures have attempted to simplify the child labor requirements and lower minimum ages to enable more young people to work part-time outside of school hours at safe jobs.

There are cogent arguments against the application of the child labor laws to volunteer workers and their organizations. Since any work performed by a volunteer is by definition voluntary and not subject to control by an employer and not compensated, exploitation of the worker as to hours of work or minimum wages is nonexistent. Where a volunteer organization provides services the undertaking of which may be dangerous to the volunteer worker (e.g., volunteer fire fighter crews), there usually is a required training program which serves to eliminate the inexperience or ignorance of a worker which could lead to injury. Thus, a violation of the child labor statute by a volunteer organization is likely to be a purely technical one, and the probability of prosecution low.

In order to determine whether any of your youth volunteer organizations are within the law, you should solicit the opinion of your state child labor authority or attorney general as to your coverage by the law and as to legal requirements, if any.

Legislation is necessary to eliminate the application of the child labor restrictions to volunteer workers. Efforts should be made to enact specific exemptions for minors involved in volunteer services from the child labor laws in every state.