CAMPAIGN TO END US CHILD LABOR: A SHARED AGENDA

Child labor in the United States has sustained its place in national and international headlines since 2022 due to a massive increase in federal child labor violations, state-level roll-backs in child labor legislation, and media investigations discovering that many children who enter the US unaccompanied are compelled to become child laborers. In 2023, the deaths of three children while undertaking hazardous work have, rightly, kept child labor at the forefront of public and political debate.

Behind the headlines, however, are deep-rooted, interrelated injustices keeping hundreds of thousands of children working legally in child labor conditions. Central to these are the discriminatory legislative inequities between agricultural and non-agricultural work at the federal level, and the gaps through which children are falling in and between federal and state legislation and other child protection measures, particularly those for unaccompanied children.

Since 2019, there has been an 88% increase in the number of children employed in violation of child labor laws. The rate at which violations are being uncovered in 2023 has increased as a result of increased enforcement, but with a backlog of over 800 cases, more inspectors are needed. At present there are 740 investigators to protect all 165 million workers.1

Latinx children who enter the US unaccompanied have been the subject of separate high-profile investigations conducted by Reuters and the New York Times. Both have shown that substantial numbers of unaccompanied children have been subjected to exploitation in child labor. Around 130,000 unaccompanied children were referred to the U.S. Office of Refugee Resettlement in 2022,2 over three-quarters of whom came from Guatemala, Honduras, and El Salvador.3 Many of these children fled to the United States to escape violence, abuse, poverty, and other dangers in their countries of origin.

The legislative disparity between agricultural and non-agricultural child labor at the federal level puts an estimated 300,000-strong child agricultural workforce at even greater risk. Children working in agriculture have far fewer protections: the minimum age for hired labor is 12,4 there are no restrictions on the number of hours that can be worked, and hazardous work is permissible at 16. Although they represent just a fraction of the full child workforce, agricultural child workers are much more likely to be exposed to hazards leading to injuries, sickness, and death; they represent 50% of all work-related child fatalities from 2003 to 2016.5

Exemptions for child workers in agriculture are rooted in the overtly exploitative racism of their era. The Fair Labor Standards Act (FLSA) dates from 1938 and its design is the result of a political compromise which preserved predominantly Black child labor and excluded Black children from protections given to white children. However, seventy-five years later; these exemptions remain, as does the racial bias: today, 78% of all farm laborers are from the Latinx community.6

Across all forms of child labor, there are clear gaps in and between federal and state legislation. All states have legislation to prevent non-agricultural child labor, which means any non-agricultural employers which are exempted from the FLSA (due to size of business/income) must still adhere to state child labor laws. However, more than a third of states either provide scant legislation on agricultural child labor, or have no regulation at all. In those states, children who work on farms which are exempt from the FLSA7 are not covered by any agricultural child labor laws whatsoever.

Even for non-agricultural child labor, state laws can be complex and allow children to fall through the gaps. State child labor codes often have a mixture of laws which are consistent with, and better, and worse than federal law, while a handful of states have lower or worse standards across the board than the FLSA. This can prove to be lethal: the 16 year-old child who died in a Wisconsin sawmill in July 2023 was undertaking hazardous work which was legal under state law, but illegal under the FLSA.

This also means ‘roll-backs’ at the state level are not straightforward, as some of the proposed or enacted legislation rolls back stronger state standards to far weaker - or, in some

1 https://blog.dol.gov/2023/10/19/wage-and-hour-division-working-to-keep-kids-safe
3 https://www.cfi.org/backgrounder/us-detention-child-migrants
4 There is no minimum age for children working on a farm owned by their family.
7 The FLSA exempts agricultural businesses which do not conduct interstate business, or which have a gross volume of sales of less than $500k p/a. In addition, there is an exemption for small farms not subject to minimum wage requirements.
cases, absent - federal standards. Since 2022, however, Iowa has rolled back its state laws to below federal standards; five states have rolled back their own child labor standards; seven other states have bills in progress to roll back standards - four of which to below federal standards; and three states have attempted and failed. Since 2021, nine states have taken advantage of an absence of federal legislation around the sale and service of alcohol and have introduced bills to lower the alcohol service age, which puts children at risk of sexual harassment and underage drinking. Seven states have enacted them.

The most common regard in which state-level legislation is stronger is a requirement for work permits or certification. This is not a requirement of the FLSA. Ultimately, some federal child labor standards set a low bar and, without addressing this fundamental challenge, states will continue to have license to lower their own standards, and to also attempt to roll back the already insufficient federal standards.

At present, violations of federal child labor laws carry civil monetary penalties of up to $15,138 per child employed illegally; while greater violations including serious injury and death could lead to fines of $68,801 to $137,602. These fines have been the subject of seven proposed bills in Congress - two of which are bipartisan - which all call for a significant increase to ensure fines act as a deterrent. Further reforms are needed as the fines currently levied against violators go to the US Treasury. None of it is used to compensate the children or their families, and few states legislate for children to be able to sue their employers for violations.

Five further bills - and two of the bills on monetary penalties - call for corporate accountability measures, encompassing a raft of proposals including the exclusion of companies which have violated child labor laws from federal government procurement processes; detailed annual reports on US child labor from the DOL; child labor audits for companies which turnover more than $500m per annum; and research on the nature of child labor in the US. The CARE Act, which has been introduced every year since 2009, would close the loopholes which enable legal child labor in agriculture.

Should Congress fail to act on any of these bills, states should take action themselves to strengthen their own child labor standards by enacting the measures proposed in many of these bills, and particularly those in the CARE Act. At minimum, states that have child labor standards that are weaker than those in the FLSA should raise standards to align with the FLSA. This is important to improve employer compliance by preventing confusion over conflicting state and federal standards; to stop children from falling between the gaps where there is no state legislation and when federal legislation does not apply; and to ensure state enforcement agencies - not just the DOL - are equipped to act when FLSA standards are violated. In the last two years, eight states have proposed stronger child labor protections, and five have enacted them.

The response to a tight labor market is not to turn the clock back a hundred years and recreate a child workforce, at the expense of children’s safety, education, and childhoods. As vanguard advocates of the first round of child labor laws in the 1930s, labor unions see more effective enforcement and implementation of labor rights and standards for adults as key to eliminating child labor. Federal and state legislators, and employers must take responsibility for creating conditions which will enable the growth of the adult workforce.

Importantly, jobs with poor working conditions, low pay, long hours, and hazardous work are not attractive to children who want a boost to their personal disposable income. Few farmers’ children are working 60-hour weeks when school is in session. The children who will undertake these jobs will do so out of necessity and/or compulsion: children from low-income families; children whose parents have had an unexpected living cost wipe out savings or create debt; and unaccompanied children transitioning into new communities and thrust into the adversarial U.S. immigration system. They are predominantly children who are poor, and children of color.

The state-level scramble for a bigger and younger child workforce, which works longer and later hours, and in more hazardous occupations, will - at best - deepen educational, economic, and racial inequalities. At worst, it puts more children’s lives in jeopardy. The evidence for this is clear because it is already happening in agriculture.

This agenda for action to end child labor in the United States has been compiled by professionals from non-profit organizations, academia, and trade unions, all working in the fields of child labor and exploitation, labor rights, unaccompanied children, and children’s rights. Critically, it includes the perspectives of survivors. It provides clear recommendations to end the exploitation of children in all forms of work, for legislators and practitioners at local, state, and national levels. We call for:

- **The protection of unaccompanied migrant children** by ensuring all children have attorneys, are protected by social services, and have access to general assistance programs; and by ending legislation which encourages children being separated from their families in the first place, and enhancing humanitarian pathways and processing.

- **The closing of child labor loopholes between agricultural and non-agricultural work** and regularly reviewing and updating hazardous order regulations.

- **The establishment of stronger consequences for child labor violations and increased enforcement** of child labor laws by increasing the capacity of the federal government to enforce the law, holding all companies which benefit from child labor accountable, and substantially raising the level of fines for violations to act as true deterrents.

- **The creation of strong legislation to hold corporations to account** for child labor violations, and for corporations to fund mechanisms to eradicate child labor from supply chains.

- **Stronger labor rights and conditions** by raising the minimum wage, ending discrimination against farmworkers, regularizing the status of the current immigrant workforce, protecting the right to organize, and preventing states from eroding labor standards.

- **A social protection system which prevents all children and families from falling into poverty**, which includes undocumented migrants and unaccompanied children.
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Ongoing media reports have cast a spotlight on U.S. companies’ labor exploitation of unaccompanied children, a particularly vulnerable group of children who have fled to the United States without parents or legal guardians, often to escape violence, abuse, poverty, and other dangers in their countries of origin. Many actions recommended to eliminate child labor broadly are also necessary to root out labor abuses of unaccompanied children specifically, which reflects the systemic nature of the challenges faced and the need for holistic solutions.

For unaccompanied children, the chief challenge is that their immigration cases are in progress and unresolved – leaving children in legal limbo, and preventing them from accessing many federal support programs that deny assistance to non-citizens. Financial pressures facing some reunified families may compound these children’s vulnerabilities, and developments like workplace injuries, sudden illness, or loss of employment can exacerbate those pressures. Under these circumstances, lack of access to essential benefits increases material hardships for vulnerable children. Administrative burdens, meanwhile, are major hurdles to the effectiveness of social services.

**RECOMMENDATIONS**

» **The Department of Health and Human Services should ensure that all unaccompanied children released from its custody have attorneys.** Statute directs HHS to ensure counsel for unaccompanied children to the greatest extent practicable, yet many unaccompanied children lack lawyers. Without an attorney, it is virtually impossible for unaccompanied children to navigate the complex and adversarial U.S. immigration system and to obtain immigration benefits that serve as bulwarks against labor abuses. Attorneys also often function as unaccompanied children’s most trusted advocates and can help extricate those children from situations of exploitation. HHS should take every measure to meet its goal that all unaccompanied children have attorneys by FY 2027 and Congress should ensure necessary funding.

» **The Department of Health and Human Services should ensure that all reunified unaccompanied children receive robust social services.** HHS should take measures to ensure social services for all unaccompanied children after reunification with sponsors, with a focus on connecting children to community service providers. This is particularly important as a preventative support for newly reunited families. Services should be robust, linguistically appropriate, and culturally appropriate. Among other activities, social workers should conduct individualized needs assessments in person, support with children’s educational enrollment and progress, connect children and families to medical and mental health providers, and provide other assistance designed to uphold the safety of sponsorship settings and promote children’s integration into local communities. Congress should appropriate funding accordingly.

» **States and localities should fund general assistance programs and navigator programs for newly reunified families.** It is essential that states and localities take every available measure to provide the following support to unaccompanied children: guaranteeing and distributing essential goods; supporting mentorship programs with paid staff who are formerly unaccompanied children; supporting community navigator programs; covering the cost of enrollment in healthcare programs not covered by Medicaid, such as mental healthcare; and offering supplemental cash or financial assistance. The federal government should ensure robust mechanisms for optimally mapping and coordinating these state and local programs and connecting eligible children and family members to associated benefits and services.

» **Ensure family unity by keeping families together at the border.** Family support is a critical bulwark against child labor exploitation, even though children in every family configuration may be exploited by unscrupulous employers. Any policies that separate children from their families generate a host of other serious consequences, including the potential to fuel child labor abuses. The Biden Administration should build robust protections against future family separation through federal rulemaking.

» **Enhance humanitarian pathways and processing.** Humanitarian pathways affect labor exploitation. When immigrants are limited in their access to formal protection from harm, they are more easily exploited as the effects of blocking access to protections always extend beyond the border. Congress should restore and enhance asylum to include victims of gender-based violence, gang violence, and climate change; increase funding for USCIS to adjudicate visa and parole; and fund newcomer services that promote effective workforce integration of newcomers.
INCREASING ENFORCEMENT AND PENALTIES AT THE FEDERAL LEVEL

A FY 2023 report from the Department of Labor suggests that only 740 enforcement agents were employed to investigate 11 million workplaces. Each individual inspector, therefore, has responsibility for investigating workplaces for 230,000 workers. Since 2010, the Office of the Solicitor has lost more than 100 attorneys due to flat budgets, further eroding the capacity of the DoL to enforce child labor laws. While the DoL under the Biden administration has shown increased interest and capacity in investigating U.S. workplaces over the prior administration, it’s clear that staffing for labor law enforcement must be expanded.

These additional resources are needed to investigate illegal child labor in sectors where minors have been found performing hazardous work in 2022 and 2023, such as auto parts factories and meatpacking facilities, and to address a wide array of workplaces in which children were found performing hazardous work by the New York Times exposé and other media reports.

However, robust enforcement must go hand in hand with strong consequences. Current civil monetary penalties for child labor levels are capped at $15,138 per child labor violation, which is insufficient to penalize large companies. The DOL investigation into PSSI, the firm that supplied cleaning crews to several meatpacking companies, resulted in a fine of $1.5 million. PSSI’s annual revenue is approximately $450,000,000. Clearly, $1.5 million is too low for a company of this size to be a deterrent against these violations. It is imperative that child labor fines are increased for any violations, and to establish minimum fines per type of violation.

RECOMMENDATIONS

» Legislation is needed that would increase current fines and establish federal minimum civil monetary penalties (CMPs), with the minimum set at $5,000 and rising to at least $150,000 for regular violations, and at commensurate levels for injury and death.

» Congress must increase USDOL/Wage and Hour appropriations to allow DOL to double the number of inspectors to 1,600, and increase the number of attorneys in the Office of the Solicitor by at least 100, over the next five years.

» DOL must hold all employers, including factory owners and those that benefit from illegal child labor such as parent companies of franchised businesses, accountable for child labor violations in its supply chain. The agency has said it will do this, but congressional appropriations language should mandate it.

» DOL must employ targeted child labor investigations and target states that weaken child labor laws with enforcement.

» DOL must enhance collaboration with state Departments of Labor. All DOL regional directors should attend Interstate Labor Standards Association Meetings when possible. The joint task force between feds and ILSA should be revived to increase collaboration.

» Congress should authorize the transfer of child labor fines into a resource pool to increase investigative capabilities and to fund victim assistance programs to aid child laborers in desperate need of resources.

» Congressional members should join the newly created Congressional Child Labor Prevention Task Force to help advance legislative efforts to combat child labor.

» Call for an update to the 2018 Government Accountability Office child labor report to ensure more accurate information is available.

» The Senate HELP Committee should convene congressional hearings on child labor to help keep the issue front and center and explore this widespread problem and solutions.

» Congress must ensure sufficient funds are available to support DOL’s child labor enforcement efforts, including the Biden supplemental appropriations request for $100 million in the current fiscal year.

» In addition, there is an urgent need for increased, disaggregated data collection and reporting/data expansion by USDOL. Congress should enact legislation that will do the following:
  • strengthen Wage and Hour Division’s ability to prevent the sale and movement of goods produced in violation of child labor rules;
  • create an annual Child Labor in the United States report; and
  • launch public information initiatives to keep policymakers and the public informed about child labor enforcement and train young workers on their rights.
The recent rise in corporate exploitation of children, most often immigrants, and in dangerous workplaces has been enabled by failings of both labor and immigration policy, which must be addressed holistically and urgently. Real solutions must lift labor standards across all industries, and guarantee workers equal and enforceable rights.

People are no longer willing to work for meager wages without childcare support, paid leave or critical safety and health protections. Around the country, workers are taking collective action and, for the first time in decades, significant gains are being made in pay, safety and health protections and standards for work that have been chronically undervalued. Rather than halting or reversing this much-needed progress, lawmakers must seize this opportunity to raise the floor for workplace standards. Better employment conditions and higher standards not only help to attract and retain workers, but also reduce poverty and curtail patterns of abuse that open the door to child labor.

For decades— even centuries— employers have tried to increase profits by making children work. So the fact that the current surge in child labor is happening amidst record-breaking corporate profits is reprehensible, but hardly surprising. Robust government oversight is needed to hold employers accountable, but enforcement strategies must be thoughtfully developed to avoid compounding the harm to victims of workplace abuse.

Any policy that creates tiered rights in our labor market is unjust and bad for workers. This is why a ‘subclass’ of millions of exploitable undocumented workers is unacceptable, and a path to citizenship for all must be forged. The right way to use immigration policy to raise wages and standards is by expanding rights and protections to as many workers as possible. As we lift up working families, we reduce the economic vulnerabilities that too often force children into the workforce.

Civil society, unions, employers, and government actors must work together to reduce the shortage of good jobs in the United States and to build an immigration system that ensures equal and enforceable rights for all workers, regardless of where we were born. It’s time for real solutions that will relegate oppressive child labor to the history books where it belongs.

RECOMMENDATIONS

Congress must:

» Raise the minimum wage and eliminate the youth sub-minimum wage. Congress must follow the lead of states which have passed legislation for a minimum wage of at least $15, and pass legislation to raise the minimum wage to $17 by 2028. By not raising the federal minimum wage since 2009, Congress is deepening historical inequality, leaving families economically vulnerable, and enabling the conditions for child labor to flourish.

» Close federal labor loopholes which discriminate against farmworkers, including eligibility to be paid overtime when working over 40 hours a week, and the ability to unionize.

» Regularize the status of the current immigrant workforce by enacting a broad and inclusive pathway to citizenship for all those who live and work here, starting with an immediate path to permanence for DACA and TPS holders. This will recognize the vital role immigrants play in increasing our shared prosperity, prevent the conditions that force children into child labor, and protect the immigrant workforce from being threatened due to their status should they report labor violations.

» Protect the right to organize. Everyone who has a job should have the chance to join a union, particularly those who are at the greatest risk of abuse when seeking to navigate workplace issues on their own. To prevent child labor, this is particularly critical for workers in the fast food industry: 2022 US DoL data showed that almost 4,000 - the vast majority - of children subjected to labor violations worked in fast food outlets.

» Prevent states from eroding standards: DOL’s Wage and Hour division should review state bills in development that seek to weaken current child labor protections and to point out where those laws conflict with federal law and to warn states that stricter federal protections hold - as mandated by law.
It is time for all companies to play a serious role in the elimination of child labor both in their own value and supply chains as well as in the broader global economy. Corporates should also recognize their responsibility to use their leverage over suppliers and business partners to eliminate child labor across all markets and sectors.

In FY 2022, franchise operations of major international fast food corporations had the most child labor violations against them, ranging from children working far longer hours than permitted to allowing children to conduct illegal hazardous work such as use of deep fat fryers. While franchise operators are penalized, parent companies go unpunished.

Virtually all significant corporations doing business in the United States - including parent companies of franchised business - have committed publicly to compliance in their operations and supply chains not only with all applicable state and federal laws but also with ILO standards, which are more restrictive on child labor than the state and federal standards in all US jurisdictions.

Greater partnership between corporations, civil society, and regulatory agencies on present risks and prevention strategies for child labor in corporate supply chains can help prevent child labor including labor by immigrant children.

RECOMMENDATIONS

Congress must:

» Pass a mandatory human rights due diligence law with pathways to remedy for victims, as other high-income countries such as the UK, France, Germany, Norway and Switzerland have done.

» Pass legislation which holds parent companies to account for child labor violations committed by more than one of their franchisees or suppliers in the United States

» Require annual DOL reports on companies which have violated child labor laws and make it a criminal offense for potential suppliers not to disclose any violations

» Ensure suppliers to the Federal government have not committed child labor violations, and do not contract with businesses which have committed child labor violations by checking against the DOL reports, unless those companies have demonstrated effective implementation of a remediation program.

» Call for the SEC to mandate companies conduct child labor audits of their supply chains and report on these annually.

We urge corporations that want to seriously address child labor take these initial first steps:

» Advocate against weakening, and reversing already weakened, state child protection and child labor protection laws

» Provide substantial funding and engage in awareness raising about the need to prevent and remEDIATE child labor in the United States

» Engage directly with the campaign to end US child labor, including trade unions and child rights organizations, to develop sustainable solutions to preventing and remediating child labor risks in their supply chains.

CREATE STRONG LEGISLATION TO HOLD CORPORATIONS TO ACCOUNT

8 ILO Conventions 135 and 182
It is well documented that the children engaged in farmwork - or ‘legal’ child labor - are predominantly Latinx children. Many high-profile media investigations, including some from the US DOL, have shown that children who are undertaking jobs with poor working conditions, low pay, long hours, and hazardous work are likely to do so out of necessity and/or compulsion. Given economic inequality in the US, this means they are also likely to be children who are poor, and children of color.

For all families who are struggling to survive, social protection policies should create a vital safety net to prevent any member of the family from being forced into situations which jeopardize their health and wellbeing. Such policies should especially work for children. Yet the United States has a patchwork social protection system, operated at both state and federal levels, and often without the budget to cover everyone who is eligible and in need. Even for those who do receive some element of social protection, it is too often insufficient. While a handful of states have expanded access to health coverage to undocumented migrants, unaccompanied minors and other undocumented children are ineligible for any federal-level, and most forms of state-level, social protection.

Ending legal and illegal child labor in the United States will take a raft of measures, but the most critical will be those which prevent child labor from happening in the first place. Social protection is one such measure. Access to child-centered social protection such as school meal programs and cash transfers can enable undocumented and unaccompanied minors and other undocumented children to stay out of the workplace and in school; healthcare prevents families from falling into poverty when injury or sudden illness occurs; and child care enables women to re-enter the workforce.

**RECOMMENDATIONS**

- Existing child care programs, such as the Child Care and Development Fund, must be fully funded to cover all eligible families, including the eradication of co-pays.

- Establish universal early childhood education, to create the opportunity for women to re-enter the workforce faster, and to provide a strong foundation for children’s learning and nutrition.

- Child Tax Credits must be permanently expanded and must cover more households living on and around the US poverty line.

- Healthcare must be made more affordable for more households, including cheaper medications and expanded insurance subsidies for more households living on and around the US poverty line.

- The United States is the only high-income country in the world without paid sick leave, and it is one of just seven countries in the entire world which has no paid family leave. Paid family, medical, and sick leave must be established by law.

- Unaccompanied and undocumented minors must have access to assistance programs, including cash transfer, healthcare, and nutritional programs, with navigator support to register and access them.

- Existing programs supporting migrant children must be preserved and expanded, including Migrant Head Start and after-school programs.
US laws and policies governing child labor in agriculture are far too weak. Agriculture is the most dangerous industry in the US for child workers and more children die working in agriculture than in any other sector. Yet longstanding loopholes in US labor law allow children as young as 12 to work unlimited hours on farms of any size, as long as they do not miss school. In all other sectors, 16 is the basic minimum employment age, and 14- and 15-year-olds can work only limited hours and only in certain occupations.

US law also allows child farmworkers to do work that the US Department of Labor (DOL) has determined is “hazardous” at age 16, while in all other sectors, workers must be 18 to do hazardous work. For example, workers at a deli counter can’t use a meat slicer until they’re 18, but on farms, children as young as 16 can use power-driven circular saws.

Despite these dangers, DOL has not updated the list of hazardous agricultural occupations since 1970. More than 20 years ago, the National Institute for Occupational Safety and Health (NIOSH) recommended updating that list. In 2011, DOL proposed new regulations, but it withdrew them in 2012 in response to pushback from agricultural groups.

Throughout history, the US has exploited the labor of Black, Indigenous, Latinx, and other people of color, and their children, in agriculture. The child labor exemptions for agriculture that remain in US law and regulations are part of this racist legacy and disproportionately harm Latinx children and their families, who make up the vast majority of hired farmworkers.

Ending child labor in the US requires closing the loopholes in US labor law and regulations that leave child farmworkers unprotected.

**RECOMMENDATIONS**

» Congress must close child labor law loopholes so that the minimum age for farm work is set at 14 and the minimum age for hazardous farm work is set at 18, achieving parity for all children. Passing the Children’s Act for Responsible Employment and Farm Safety, or the CARE Act [H.R. 4046], led by Congressman Ruiz, would achieve this, while exempting children who work on their own families’ farms.

» Congress must also act urgently to protect children from especially hazardous crops, such as tobacco. Passing the Children Don’t Belong on Tobacco Farms Act [H.R. 4020], led by Congresswoman DeLauro and Senator Durbin, would ban children under 18 from hired work in tobacco farming, while exempting children who work on their own families’ farms.

» The regulations governing hazardous work in both agricultural and non-agricultural work should be reviewed periodically, and at least every 5 years, by the Secretary for Labor and updated, with formal input from the Interagency Task Force to Combat Child Labor Exploitation or a National Child Labor Committee to more adequately protect children from oppressive child labor. The US Department of Labor should update the narrow, 50-year-old regulations governing hazardous work in agriculture and swiftly open new rulemaking on the topic.

If you or your organization would like to join the Campaign to End US Child Labor, please visit: enduschildlabor.org