

# Policies for states and localities to fight oppressive child labor

**Report** • By **Terri Gerstein** • February 27, 2024

# Executive summary

State governments can play a critical role in enacting policies to combat the recent marked rise in child labor violations. This report reviews the enforcement provisions of current state-level child labor laws throughout the United States, and identifies a number of potential state policy options that would help curtail violations. In addition, the report notes the potential role for local government in this area.

In short, to deter and address violations, states should:

- Increase funding for enforcement
- Increase civil and criminal penalties for violators to adequate levels to deter violations
- Create damages or restitution for victims of child labor violations, to provide more meaningful redress to victims and overcome obstacles to reporting
- Create clear and readily attainable accountability for lead corporations with child labor violations in their supply chain, so that lead corporations cannot evade responsibility through use of subcontractors, employment agencies, or other intermediaries
- Modify workers' compensation laws to allow damages lawsuits to be filed when children are injured or killed on the job when child labor violations are occurring, thereby addressing children's and survivors' needs while deterring violations
- Ensure that companies with child labor violations (directly or in supply chains) do not receive government contracts without remedying violations
- Increase detection and expand the currently limited pool of potential enforcers by creating a private right of action or whistleblower statute for child labor violations
- Enact stop work order statues or pass state-level "hot goods" or consumer notification provisions to halt the flow of illegally made goods in commerce and to alert the public
- Use public disclosure to inform consumers of

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company practices and deter violations

- Enact or enhance work permit/employment certification requirements for minors

This report describes these policy approaches, and notes already existing precedents for similar laws. Notably, almost all of these policies could be enacted at the federal level as well. No one policy approach is likely to resolve the problem; a package of policies is therefore advisable.

## Background on child labor laws

Federal and state laws allow children, even those as young as 14, to work in a range of jobs: in offices, grocery stores, restaurants, retail, and much more. However, the federal Fair Labor Standards Act (FLSA), as well as most state child labor laws, contain two general sets of provisions: (1) a prohibition on employing minors in certain exceedingly dangerous jobs and (2) limitations on the hours that children can be assigned to work, in order to safeguard their health, development, and ability to get an education. Many state laws contain stronger protections, such as more expansive protections against hazardous work, greater limitations on work schedules, and/or the requirement of a work permit for minors.

If state laws are stronger than federal laws, employers must comply with both. Where states have less protective laws, covered employers must still comply with federal law. Both federal and state child labor laws contain far weaker protections in agriculture than in other industries (USDOL 2023a; Sherer and Mast 2023a). Also, both federal law and many state laws permit minors and other young workers (such as those under 20) to be paid a subminimum wage, and some states carve minors out of their minimum wage statutes altogether (Mast 2024).

State child labor laws vary considerably (Kailash Satyarthi Children’s Foundation 2023).<sup>1</sup> A majority of state laws incorporate a requirement that minors obtain an employment certificate or work permit demonstrating proof of age, parental permission, medical clearance, and/or school permission. Some also require disclosure about the place, type, and hours of work (USDOL 2023b).

The primary state-level enforcer of child labor laws is generally the state department of labor or its equivalent,<sup>2</sup> with some exceptions, such as in Massachusetts (the state attorney general enforces child labor laws), Florida (the Department of Business and Professional Regulation plays this role), and Mississippi (county sheriffs).<sup>3</sup> Many states have both civil and criminal penalties for child labor violations. Almost all have some form of civil monetary penalties. Where there are criminal penalties, prosecution would be brought by the district attorney or equivalent, or in some cases by the state attorney general.

Several states have recently rolled back some of their child labor protections, and bills have been introduced to roll back laws in many others (Sherer and Mast 2023a, 2023b; Mast 2023a). These rollbacks are the result in large part of a coordinated campaign by conservative groups (Bogage and Paul 2023). These rollbacks will endanger children;

some also conflict with the FLSA.

## The recent upsurge in oppressive child labor

In the past several years, there has been a marked upsurge in child labor violations. The U.S. Department of Labor (USDOL) has reported an 88% increase in overall child labor violations between 2019 and 2023 (USDOL 2023d). State-level violations have increased as well, in Pennsylvania (with a 276% increase in 2023 child labor investigations compared with 2022), New York, and elsewhere (PA 2023; NYSDOL n.d). Maine’s labor department reported more injury claims filed for workers ages 14 to 17 in 2022 than in any of the previous 10 years (Popp 2023).

Media reporting has also uncovered serious violations, many involving immigrant children working for automobile parts suppliers, chicken-, fish-, and meat- processing plants, and factories, including for household-name products like Cheerios and Nature Valley, J. Crew and Fruit of the Loom (Dreier 2023a; Reuters 2023; Johnston 2023; Ress 2023; Cotsirilos 2023). Many cases involved multi-layered “fissured” supply chain structures, in which lead corporations use subcontractors or staffing agencies (Weil 2023). In some cases, minors have been killed on the job (Golgowski 2023).

The full scope of the problem is not yet known because numerous obstacles prevent these cases from being reported or coming to light, including fear of employer retaliation, lack of knowledge about workplace laws, distrust of government agencies, language access issues, and more (Deutsch and Gerstein 2023). Nonetheless, there is clearly a significant and growing problem of children being illegally exploited at work, in jobs that are dangerous and inappropriate for them and working schedules that are not compatible with their physical and educational needs.

## Policy options to strengthen child labor enforcement

Noncompliance with workplace laws has been described as a “rational” profit-maximizing decision made by unethical employers in response to low enforcement rates and deficient penalties. Scholars who have analyzed employer costs and benefits of noncompliance find that such “employers will not comply with the law if the expected penalties are small either because it is easy to escape detection or because assessed penalties are small” (Ashenfelter and Smith 1979). A broader way of understanding this calculus is that labor law compliance is a product of the likelihood of detection and the seriousness/severity of consequences if detected.

Currently, our system fails on both fronts: the likelihood of detection is exceedingly small, and the consequences of detection are insufficient: Federal and state enforcement

resources are grossly insufficient, diminishing the likelihood of detection, and when detection does occur, the potential consequences are too modest, and generally imposed only on lower-level actors, not major corporations at the top of supply chains, with the leverage to actually stop violations (Gerstein 2023).

The likelihood of detection is further decreased by the barriers to complaining for child workers, given their heightened vulnerability. The likelihood of detection is also reduced because of the decline of union density: unions increase worker reporting of violations, presumably because of reduced fear of retaliation; also, union stewards are on-site job monitors who can raise issues about violations without fearing reprisals.

As a result of the above considerations, urgently needed measures include increasing enforcement resources, increasing civil and criminal penalties, creating damages or remediation measures for child labor victims, and creating clear accountability for lead corporations when there are repeat or widespread violations in their supply chains. In addition, other state-level measures would help considerably, including workers' compensation law modifications, blocking procurement with certain child labor violators, allowing stop work orders, mandating labor rights education, enacting state-level "hot goods" provisions allowing for enjoining of illegally produced products, publicly disclosing child labor violations, and creating a private right of action or whistleblower program.

This section describes changes in laws and policies that could strengthen child labor *enforcement*; it does not contain recommendations regarding strengthening substantive provisions of federal and state child labor laws (such as expanding the definitions of hazardous workplaces, improving protections for children in agriculture, or eliminating the lower subminimum wage for minors allowed in many states) although in most cases they should be significantly more protective.<sup>4</sup>

In analyzing the available approaches, state lawmakers and worker advocates will likely consider a number of factors, including the potential deterrent impact on child labor violations, the cost of implementation, and the political landscape and possibilities in a given jurisdiction. It is worth noting, however, that with the exception of increasing resources for enforcement, many of the below measures would require modest funding to implement.

This section outlines a number of policy options to strengthen child labor enforcement. Given the complex nature of the problem and its causes, no one approach alone is likely to be sufficient. Policymakers should deploy a package of the below policy tools, focusing above all on the goal of preventing violations from occurring in the first place.

## **Increase funding for enforcement**

To deter violations and incentivize compliance, employers must have the sense that there is some realistic possibility that their violations will be detected. Many obstacles prevent workers from reporting violations by their employers, including fear of retaliation (Huizar 2019). It is even more unlikely that children whose rights are violated at work will report their exploitation. At both the federal and state levels, investigators responsible for child

labor enforcement are typically also responsible for enforcing a host of other laws, including minimum wage and overtime laws.

The U.S. Department of Labor's Wage and Hour Division had only 733 investigators at the end of 2023 (Looman 2023). This is nearly 500 fewer investigators than the Division had at its peak in 1978 (Costa 2023; Rascoe 2023).<sup>5</sup> The Occupational Safety and Health Administration (OSHA), responsible for workplace safety and health, is also starved for resources: in 2019, it would have taken OSHA 162 years to inspect each workplace under its jurisdiction just once (AFL-CIO 2022), and in states that have chosen to operate their own occupational safety and health plans (USDOL n.d.a), these programs are also generally underfunded and understaffed.<sup>6</sup>

State labor departments are similarly generally inadequately funded to fulfill their missions. A 2018 investigation found that seven states had no investigators at all whose responsibilities included enforcement of minimum wage and overtime laws, while most states had fewer than 10 (Levine 2018). A subsequent study of six states that are generally protective of workers (Maine, Massachusetts, New York, Oregon, Vermont, and Washington) also reported inadequate levels of wage and hour enforcement staffing (Hamaji et al. 2019). Most recently, a 2023 report examined state labor agencies in 16 states and again found severely inadequate labor enforcement staffing levels (Karl 2023).

The lack of sufficient investigators and starving of labor enforcement agencies, both at the state and federal levels, allow too many employers to exploit workers with impunity because of the lack of consequences they are likely to face. Meanwhile, child labor investigations are highly resource intensive, requiring specialized skills and extensive work by teams of investigators for an extended period of time, including potentially preparatory surveillance and interviews, on-site investigations late at night with skilled, trained multilingual staffers, and extensive follow-up with children, company representatives, school officials, and more.

In this context, increasing funding to labor enforcement agencies is essential, both to deter child labor violations and to address them appropriately when they occur.<sup>7</sup>

The increased funding should be used to increase the number of investigators. While there is no national benchmark in the United States, the International Labor Organization recommends a ratio of one labor investigator per 10,000 workers in industrial market economies (ILO 2006, 4). Most states, as well as the federal government, are far from that level. In addition, increased funding should be used to increase pay for labor investigators, in order to address turnover and attrition that some agencies have reported among their staff.<sup>8</sup>

# Increase civil penalties and allow them to be distributed (as penalties or damages) to child labor victims

## Initial observations

Penalties are often the first place policymakers look when seeking to strengthen child labor laws, but they should resist penalty increases as the primary or sole approach to addressing child labor violations, because even high penalties alone are unlikely to solve the current problems. If employers are highly unlikely to be caught because of scant enforcement resources, if lead corporations can deflect legal responsibility to subcontractors, if lower-tier staffing agencies are effectively judgment-proof, then even sky-high penalties are not likely to deter violations sufficiently. Moreover, high penalties alone—which accrue to the state—are not likely to incentivize reporting of violations and do not expand the pool of enforcers. And in many cases, for large corporations, even relatively high penalties (by workplace law standards) will still be treated as the cost of doing business. Therefore, while it is critical to increase current penalties that are often no more than a slap on the wrist, it is also essential to enact a package of policy reforms—not just penalties—to meet the needs of the moment.

## Landscape

State child labor civil monetary penalties vary widely, but as a starting point, state maximum penalties are almost uniformly<sup>9</sup> significantly less than the maximum federal penalty (currently \$15,138 per violation).

### State child labor civil monetary penalties vary widely

For first-time violations, fines range from a minimum of \$50 (Idaho)<sup>10</sup> to a maximum of \$10,000 (Delaware, Tennessee in some circumstances, Texas, Virginia if the child is seriously injured or dies). Maximum civil monetary penalties are often in the low four figures or even less; for example, Indiana’s maximum penalty is \$400. A notable exception is Maine, where the penalty for a third or subsequent intentional or knowing violation within a two-year period is \$50,000.

With the exception of Maine (where penalties for multiple repeat violations within a three-year period can reach as high as \$20,000 to \$50,000),<sup>11</sup> state-level penalties generally top off at around \$10,000 per violation, as in California (hazardous work violation penalties are between \$5,000 and \$10,000 per violation) and Delaware (civil penalties are up to \$10,000 per violation).<sup>12</sup>

Many states have unusually low penalties for child labor violations, with penalties less than \$1,000 per violation. In Colorado, the labor department can issue a child labor penalty of \$20 per offense (although each day the conduct continues after an order constitutes a separate offense). In Idaho: the maximum employer fine is \$50; if an employer continues

to employ the child in violation of the law after being notified by certain government officials, the fine is between \$5 and \$20 for each day that the employment continues. In Indiana: for several types of violations, including hazardous work, the civil penalties are a “warning letter for any violations identified during an initial inspection”; \$100 for a subsequent violation; \$200 for a third violation; and \$400 for a *fourth or subsequent* violation, but only if they occur within two years of a prior infraction.<sup>13</sup>

In contrast to most states, Wisconsin has a provision creating damages owed to the affected minor when there are child labor violations where there are violations of hours limitations or rules of the labor department. Specifically, the employer is liable, in addition to wages already paid, to pay each affected minor “an amount equal to twice the regular rate of pay as liquidated damages, for all hours worked in violation per day or per week, whichever is greater.”<sup>14</sup>

**Factors to be considered:** Some state child labor civil monetary penalties consider specific factors, including whether the violation was intentional or willful (for example, Maine);<sup>15</sup> the type of child labor law violated—e.g. hours, work permit, hazardous work (California,<sup>16</sup> Minnesota;<sup>17</sup>) history of past violations (Colorado,<sup>18</sup> New York;<sup>19</sup>) or failure to remedy violations (Colorado<sup>20</sup>). Several states, such as New York, Rhode Island, and Virginia, allow for a higher civil monetary penalty if child labor laws are being violated and a child is injured or killed on the job.<sup>21</sup> Some state laws require consideration of a number of factors; for example, New York law requires the labor department to consider the size of the business, the employer’s good faith, the gravity of the violation, the history of previous violations, and failure to comply with record-keeping or other requirements.<sup>22</sup>

## Recommendations regarding penalty amounts

The low civil penalty levels are highly unlikely to deter violations. The appropriate recommended penalty level may differ by location, given the variation in state economies. It is sensible also to take into account, as many state penalty schemes do, an employer’s history of violations and penalize repeat violators more harshly. It may also be worth considering a more stringent penalty scheme for violations involving prohibited hazardous occupations or workplaces that place children in physical danger.

Above all, penalty levels should be set with the overarching goal in mind of deterring violations and punishing them when they occur. At the very least, states should adopt a penalty schedule that is equal to or greater than the penalties under the Fair Labor Standards Act.

## **Additional recommendation: Allow penalties to be distributed to child labor victims (reframing penalties as damages if needed), or use penalty funds to remediate harm to victims**

Penalties in child labor cases are remitted to the government. Federal and state laws do not generally contain provisions aimed at remediating the harm of violations to the victims



of child labor violations or requiring the employer to in any way address the needs of the victims.

This feature of U.S. child labor laws has two major implications. First, children’s needs are overlooked. While deterrence and prevention are critical goals of labor law enforcement, redressing harm is also important, and enforcement of all kinds of laws has evolved to take a more victim and survivor-focused approach. When vulnerable children are exploited at work, especially in the more severe cases, their needs should be addressed.{{23}}

Second, the current enforcement scheme does not incentivize reporting of violations. In many workplace enforcement cases, such as those involving wages or discrimination, worker/victims have the opportunity to receive financial redress, such as back wages, liquidated damages, lost compensation, compensatory and/or punitive damages. These remedies help make wronged workers whole; they also give workers some incentive to report violations, despite the many obstacles to reporting that exist.

In contrast, in the case of child labor enforcement, the remedies are generally injunctive relief and penalties for the government. From the point of view of the minor involved, enforcement leads only to the loss of income resulting from their removal from a job that, while dangerous, may have been a needed source of income for themselves or their families.

Addressing the needs of child labor victims should be part of any policy proposal. Penalties could be distributed to victims, or, if state law requires penalties to accrue only to the state, liquidated damages provisions could be added as additional available relief. As noted above, Wisconsin has a provision to this effect for certain child labor violations; this approach could be expanded upon and adopted elsewhere. Another approach would be earmarking penalties specifically to be used to services provided to victims.

## **Increase criminal sanctions**

### **Initial observations**

Criminal penalties for child labor violations are generally quite minimal. Weaknesses in our regulatory systems have been cited as calling for criminal prosecutions of corporations for various kinds of abuses, including related to workplace laws (Steinzor 2014, 15-39). However, if criminal penalties for child labor violations are nominal—treated in a similar manner as, for example, disorderly conduct, loitering, harassment, and low-level retail theft (as in Pennsylvania)—it sends a strong and unhelpful message to employers about the relative importance of child labor laws. In addition, district attorneys and other prosecutors are unlikely to expend their limited prosecutorial resources on cases with such extremely low-level criminal penalties.

However, as with civil penalties, increasing criminal penalties alone will be insufficient to address the surge in child labor. Even with higher potential charges, few prosecutions are likely to occur: The criminal burden of proof is high, prosecutors caseloads’ are high, and

the subject matter is unfamiliar to them. And criminal prosecution is likely inappropriate for many cases, such as first-time non-severe hours violations. Also, criminal prosecutions under current law may be more likely to involve lower-level front line workers than higher-tier corporate actors.

A discussion of the history and flaws in the criminal justice system is beyond the scope of this report;<sup>24</sup> it is worth noting, however, that some criminal justice reform concerns can potentially be addressed even as cases are brought. For example, prosecutors may charge corporations and not individuals. Also, prosecution may have considerable deterrent impact on employer conduct even without incarceration, because of reputational and other effects. The dispositions to date of criminal child labor cases have been modest: a Michigan meatprocessor recently pled guilty in relation to a teenager whose hand was amputated in a meat grinder. The sentence included only payment of \$1,143: \$500 in penalties plus additional costs and fees (MI AG 2023).

It is likely that well-publicized prosecutions of child labor violations would help deter violations. While there are no studies directly on point about deterrence resulting from criminal prosecution of workplace violations, a criminal justice scholar examining deterrence observed that changes in enforcement and punishment can affect some kinds of behavior, including “calculated instrumental crimes” such as tax compliance (Tonrey 2008); this may be true of child labor law compliance as well.

It is critical that laws and resulting prosecutions focus on the *employers* who have committed child labor violations, not on parents or guardians, who are likely struggling and potentially exploited workers themselves. Prosecuting parents or guardians would be highly counterproductive, chilling reporting of child labor violations, moving these practices even further underground, as well as harder to detect and investigate. Prosecuting parents or guardians will ultimately badly hinder the government’s ability to stop child labor violations.

## Landscape

Most states have criminal penalties for child labor violations, typically misdemeanors or other low-level crimes. Criminal penalties specifically for child labor violations are generally located in labor statutes, not in state penal or criminal codes, so many prosecutors may be unaware of potential charges. Child labor criminal prosecutions occur extremely rarely.

State provisions creating criminal consequences often include both a penalty dollar amount and a potential period of incarceration. For example, under Maryland law, a person who employs a minor in violation of the child labor law “is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 90 days or both.”<sup>25</sup>

As with civil monetary penalties, criminal sanctions in some states are lower for a first offense than for subsequent offenses, including in jurisdictions such as in Alabama, New York, and West Virginia. Some states do not specify that a child labor violation amounts to

a misdemeanor or felony, but rather the statute states that the employer will be prosecuted with a criminal fine or imprisonment. For instance, in Louisiana, the statute reads that the employer will be fined between \$100-\$500 dollars, or imprisoned for 30 days to 6 months, or both.<sup>26</sup>

In several states, child labor violations can rise to felony status, particularly for second or subsequent offenses (Alaska; also Michigan for third offense), situations where there is serious physical injury (Washington), or both (Alabama, Arkansas). In Connecticut, child labor violations are a Class D felony; in New Hampshire, a “natural person” (i.e. a human being) who violates the child labor laws is guilty of a misdemeanor, but “any other person” (i.e. a corporation) is guilty of an unspecified felony.

More often, criminal penalties are extremely modest. In Colorado, knowingly violating or failing to comply with child labor laws is a misdemeanor, punishable by a fine of \$20 to \$200 per offense (increased to \$100 to \$500 for a second or subsequent offense).<sup>27</sup> In Pennsylvania, a child labor violation is a “summary offense,” which is “the most minor type of criminal offense in Pennsylvania, and is often called a ‘non-traffic citation.’ Summary offenses can include disorderly conduct, loitering, harassment, and low-level retail theft, among others” (CLSP n.d.). The penalty for a first conviction is \$500 per violation; subsequent offenses may result in a \$1,500 fine, up to ten days’ imprisonment, or both.<sup>28</sup> In Kansas violating child labor laws is a misdemeanor resulting in a fine of \$25 to \$100 or imprisonment in county jail for 30 to 90 days.<sup>29</sup> And in Mississippi, employing minors in certain hazardous occupations is a misdemeanor; penalties include a \$50 to \$100 fine, 10-60 days in county jail, or both.<sup>30</sup>

Another avenue for prosecutors includes penal or criminal code provisions, such as those related to child abuse or endangering the welfare of a child.<sup>31</sup> One of the few child labor prosecutions in recent history was brought under New York’s endangerment statute (NY Attorney General 2018).

## Recommendations

While the need for criminal justice reform is urgent, and some advocates may question the approach of addressing social problems through prosecution, it seems wildly inappropriate that child labor violation criminal penalties are so modest compared with other crimes that have far lesser human impact. Accordingly, criminal penalties for child labor charges should be increased to levels more appropriate to the seriousness of the violations. It may also be advisable to distinguish between hazardous occupations and hours of service violations.

Guiding considerations in setting the appropriate criminal penalties could include: What penalty will likely deter violations? What types of charges are prosecutors with limited experience and resources likely to consider? And most importantly, what kind of penalty is commensurate with the harm that has been done? Statutes related to the endangerment of a child may provide useful guidance: Child labor laws could treat employers that have endangered children similarly to anyone else who does so, rather than offering employers markedly more lenient treatment.

# Hold lead corporations accountable

## The need for greater accountability by lead corporations

One common feature present in some of the most extreme child labor violation cases is a “fissured workplace” business model in which a lead corporation (often a large multinational corporation) contracts or subcontracts key aspects of the work to other employers, who then use staffing or employment agencies, all of which serve to insulate the lead corporation from clear accountability under the law (see Weil 2014; Weil n.d. on the “fissured workplace”).

The definition of “employ” under the FLSA is extremely broad—“to suffer or permit to work”—yet case law developed over years makes it more difficult than it should be to hold lead corporations responsible as joint employers (Ruckelshaus et al. 2014), which allows household name corporations to deflect responsibility for these violations and place the blame with subcontractors and staffing agencies.

Lead corporations, more than any entity, have the ability to prevent child labor violations in their supply chains. They can extensively vet contractors before engaging them, regularly monitor them, and terminate contracts immediately where child labor is found (Padin and Dworak-Fisher 2023).<sup>32</sup> They can also perform work in house rather than contracting it out” (JBS Foods 2023).

Under current law, even if there are repeat or widespread child labor violations within supply chains for a corporation, it is far too challenging to hold that corporation responsible: while obtaining a finding of joint employer liability is not impossible under current law, it is more difficult than it should be, and corporations have ample legal resources to resist such lawsuits.

To prevent and deter child labor violations, lead corporations should more readily be held liable for violations in their supply chains. This should be the case as a general matter, but it is especially important to hold lead corporations responsible in situations where their supply chains, contractors, or subcontractors have committed repeat violations, unremedied violations, or violations that are widespread (in multiple locations or involving a number of minors) (Padin and Dworak-Fisher 2023).

## State law precedents for accountability by lead corporations

A number of state laws provide examples of statutes that impose joint and several liability on higher-tier corporations, or otherwise require accountability of more than one entity in a fissured workplace structure.

**General joint and several liability:** D.C. law makes general contractors jointly and severally liable along with subcontractors for violations of wage payment, living wage, and paid sick and safe leave laws.”<sup>33</sup> California has a more detailed “client employer” law

imposing liability on companies who use subcontractors to provide more than five workers that perform work for the company or at the company's place of business. Under the statute, a "client employer" is jointly liable for payment of unpaid wages and for securing workers' compensation insurance.<sup>34</sup> The law also bars a client employer from shifting legal duties or liabilities related to the state's occupational safety and health laws.<sup>35</sup> Under this law, the California Labor Commissioner's Office in 2024 reached a \$1 million settlement with Cheesecake Factory and two janitorial subcontractors (CA DIR 2024).

**The construction industry:** Because of the construction industry's high rate of violations and fissured structure, a number of states have passed laws focused on construction contractors, creating liability for prime or general contractors for wage violations committed by their subcontractors. States that have passed such laws include [California](#), [Hawaii](#), [Illinois](#), [Maryland](#), Minnesota, [New Jersey](#), [New York](#), [Nevada](#), and [Virginia](#).<sup>36</sup> A bill to this effect, HB 24-1008, has been introduced in Colorado in the 2024 legislative session. Some of these laws require indemnification by the subcontractor for violations, unless the general contractor's lack of payment to the subcontractor caused the violations.

**Temporary and staffing agencies:** D.C., Illinois, New Jersey, and Washington all have laws specifically focused on temporary or staffing agencies, because of high violation rates and to prevent violations from falling between the cracks if neither the temporary/staffing agency nor their job placements takes responsibility for workplace compliance. Illinois and Washington laws create workplace safety and health obligations: both the agency and client are responsible for training workers about specific on-the-job hazards.<sup>37</sup> D.C. law creates joint and several liability for temporary staffing agencies and their clients for violations of the wage payment, living wage, and paid sick and safe leave laws.<sup>38</sup> Without creating joint liability for temporary agencies and their clients, New York law prohibits employment agencies from placing minors in employment that violates the child labor laws.<sup>39</sup>

**The garment industry:** New York and California have provisions creating lead corporation up-chain liability in some circumstances for violations by garment suppliers or subcontractors. New York law creates liability for any manufacturer or contractor in the apparel industry that "ships, delivers or sells any apparel...who knew or should have known that such goods were produced in violation of" the state's wage payment and minimum wage laws, and for any manufacturer or contractor "who knew or should have known with the exercise of reasonable care or diligence" of a subcontractor's failure to comply with wage payment or minimum wage laws. Even retailers have potential liability if they sell apparel items that they knew or should have known were produced in violation of wage laws, unless certain factors are present.<sup>40</sup> The Garment Worker Protection Act in California creates joint and several liability for manufacturers, contractors, and brand guarantors (defined in the statute) for wage violations by contractors who perform work for them.<sup>41</sup>

## **Procurement consequences for lead corporations with child labor violations in their supply chains**

As discussed in more detail below, the procurement process offers significant potential for deterring violations. State and local governments should not enter into contracts with corporations that have a history of repeat or widespread child labor in their supply chains. A recently-proposed bipartisan federal bill, discussed in more detail below, takes this approach.

## **Laws that disincentivize or prohibit workplace fissuring**

Disincentivizing workplace fissuring would encourage more direct hiring by lead corporations. Laws protecting temporary workers in Illinois and New Jersey both remove incentives to fissure by requiring employers to pay temp workers similar wages as direct hires.<sup>42</sup> New Jersey's law also prohibits excessive "conversion" fees that temporary firms often charge to third-party clients that would like to hire temporary workers in-house.<sup>43</sup> Newark, New Jersey, requires hotels to directly employ (without subcontracting or using staffing agencies) all "critical employees," (housekeeping, food preparation, front desk, engineering, and other essential hotel workers).<sup>44</sup>

## **Allow lawsuits for damages, rather than limiting minors to workers' compensation as the exclusive remedy, when minors are killed or injured during employment prohibited by child labor laws**

### **Background**

Workers' compensation insurance, required in all states except Texas, provides medical care and/or cash benefits for workers who are injured or become ill as a result of their jobs. If a worker dies from a covered injury or illness, their surviving spouse, minor children, and/or dependents receive survivor benefits. The workers' compensation insurance premium is calculated based on factors such as the number of workers, worker remuneration, and the type of work, with higher premiums for higher-risk work. Workers' compensation insurance is experience-rated; employers' rates increase when employees have claims.

Workers' compensation insurance was originally created in the early 20th century in what has been described as a "grand bargain": Injured workers receive the benefit of what is supposed to be guaranteed no-fault occupational injury and illness insurance; in exchange, they are limited to what is referred to as the "exclusive remedy" of workers' compensation and, with very limited exceptions, may not file tort lawsuits against employers for damages.

## Landscape

Some states allow minors or their survivors to file damages lawsuits when injuries or deaths occur during prohibited employment, not limiting them to workers' compensation as the exclusive remedy

Several states allow lawsuits against employers for damages, either along with or instead of workers' compensation, when minors are injured or killed during employment in violation of child labor laws. These provisions provide more meaningful redress for minors. This approach can also change an employer's risk calculus and thereby deter violations. If an employer hires children to do prohibited hazardous work and a child is killed or gravely injured, the employer's potential financial exposure is likely considerably greater in a lawsuit for damages than it would be in the workers' compensation system, where the likely worst consequence would be a somewhat higher annual workers' compensation insurance premium.

Colorado in 2023 passed a law that allows aggrieved parties, including parents of children protected by the state's child labor law, to file damages lawsuits in addition to seeking workers' compensation remedies if a minor is injured during a week when the employer intentionally required them to work hours in violation of what state law permits, or if a minor is injured while engaged in work prohibited by the law.<sup>45</sup> New Jersey has a similar provision.<sup>46</sup> Illinois law allows minors or their legal representatives to choose between workers' compensation and a lawsuit in court: They must make this selection within six months after injury or death or six months after appointment of a legal representative, whichever is later.<sup>47</sup>

Several states have case law allowing damages lawsuits and not limiting remedies to workers' compensation when state child labor laws were being violated and children were injured or killed on the job,<sup>48</sup> although in some states, courts have disallowed such lawsuits when there were only federal—and no state—child labor violations.<sup>49</sup>

### Increased compensation when minors employed in violation of child labor laws are injured or killed

A number of state workers' compensation laws require increased compensation if a minor is injured or killed on the job while employed in contravention of the child labor laws.<sup>50</sup> In some instances, this is for any child labor violation (state or federal), in other cases, it is for state violations only, or for certain categories of violations (e.g. hazardous work). Part of the logic of these policies is to compensate for the far greater economic losses involved: for example, lost earnings for a 15-year-old child permanently disabled by a workplace injury are greater than those of a 48-year-old adult. Overall, this approach is likely less effective in deterring violations because it does not as starkly increase employers' outside potential liability as much as permitting damages lawsuits does. However, this approach does increase employer liability somewhat and also provides support to minors who have been injured.

In Rhode Island, workers' compensation benefits are tripled if a minor is injured while

employed in violation of state or federal law.<sup>51</sup> Several states double compensation owed in such situations, either for state law violations only or for state or federal violations. There are numerous variations on this approach: judicially determined “additional compensation,”<sup>52</sup> double compensation if the employee is injured because of the employer’s “serious and willful misconduct,”<sup>53</sup> double compensation but with exceptions related to educational programs or between-semester work,<sup>54</sup> double compensation but with \$7500 or \$15,000 caps depending on the violation type,<sup>55</sup> and double compensation but only if the minor did not misrepresent their age in writing to the employer.<sup>56</sup> In some states, like Arizona, Missouri, and Pennsylvania, workers’ compensation is increased but only by 50% in such child labor violation cases.<sup>57</sup>

Some state laws relieve insurance companies from responsibility for additional payments, instead placing the burden on the employer.<sup>58</sup> This approach could help deter violations, because the employer—not the carrier—risks potentially considerable additional costs. However, it also places the burden of pursuing the employer and the risk of employer nonpayment on the injured/deceased child and their family.

Some states require the workers’ compensation insurance carrier to pay the additional compensation, but allow the carrier to seek payment from the employer for any amount that is owed beyond the usual benefits for the injury, had the child labor violation not occurred.<sup>59</sup> This approach relieves the injured child or their family from bearing the risk of an employer’s insolvency or intransigence; instead, the carrier must pay the benefits and pursue the employer itself, a fair result given that the carrier is better able to bear this risk and had more ability to prevent or prepare for it by exercising due diligence regarding its customers.

## Recommendations

When minors are injured or killed on the job while performing work prohibited by either state or federal child labor laws, the policy most protective of children would allow these minors or their parents/guardians both to receive workers’ compensation insurance and also to file damages lawsuits against employers, as Colorado and New Jersey do. This approach would help deter employer violations and provide redress for children injured on the job.

For states that opt for the less impactful approach of maintaining the exclusive remedy of workers’ compensation but increasing the amount owed in such situations, recommended policies include tripling compensation amounts as Rhode Island does; applying increased compensation requirements to violations of both state *and federal* laws; requiring the workers’ compensation carrier to pay increased amounts and seek indemnification from the employer; and requiring immediate payment of additional monetary compensation required.



## **Prevent government contracting with corporations with widespread or unresolved child labor violations themselves or in their supply chains**

Ideally, government procurement should create high-quality jobs.<sup>60</sup> At the very least, government agencies should require clear and complete compliance with labor standards laws, including child labor provisions, by current or would-be government contractors. Statutes should require child labor compliance for government contractors and their suppliers, vendors, and subcontractors.<sup>61</sup> As discussed in more detail below, a bipartisan U.S. Senate bill to this effect has been proposed.

Precedents for this approach exist at the local level. Numerous local government ordinances require bidders for higher-dollar public projects to meet “responsible contractor” criteria including prior compliance with workplace laws. Other localities have wage theft ordinances that bar those with histories of recent workplace law violations.<sup>62</sup>

Using the leverage of procurement to deter and address violations has the potential for considerable impact. Given the enormous scale of government contracting even by small states, this measure would sharply increase the potential consequences of child labor violations. After all, there are thousands of corporations that are state government contractors, and most of them have subcontractors, vendors, or suppliers in their supply chains (Conway 2012).

## **Enact state-level ‘hot goods’ or similar provisions to prevent products illegally manufactured using child labor from moving in commerce**

### **Background**

Under the FLSA’s “hot goods” provisions, the USDOL may seek a court order to prevent interstate shipment of goods produced in violation of federal minimum wage, overtime, or child labor provisions. The order can apply to the employer that manufactured the products, as well as to anyone who possesses the good (USDOL WHD 2023). The illegally produced goods must have been produced in the past 90 days for minimum wage and overtime violations, or within a shorter period—the past 30 days—for child labor violations.<sup>63</sup> The hot goods provision creates a sharp disincentive for violating child labor laws and creates some up-chain consequences for corporations higher in a supply chain.

The USDOL has used this provision in relation to child labor violations: in July 2023, for example, the USDOL reached a consent judgment with a national food manufacturing

corporation whose subsidiary employed minor teenagers to operate meat-processing equipment prohibited for children under the FLSA. The consent judgment followed notification by the USDOL to the employer that objected to shipment of the goods, citing the hot goods provision. Under the settlement, the corporation agreed to several key conditions to ensure future compliance, including hiring a third-party monitor and reporting regularly to the USDOL, among other measures (USDOL 2023c).

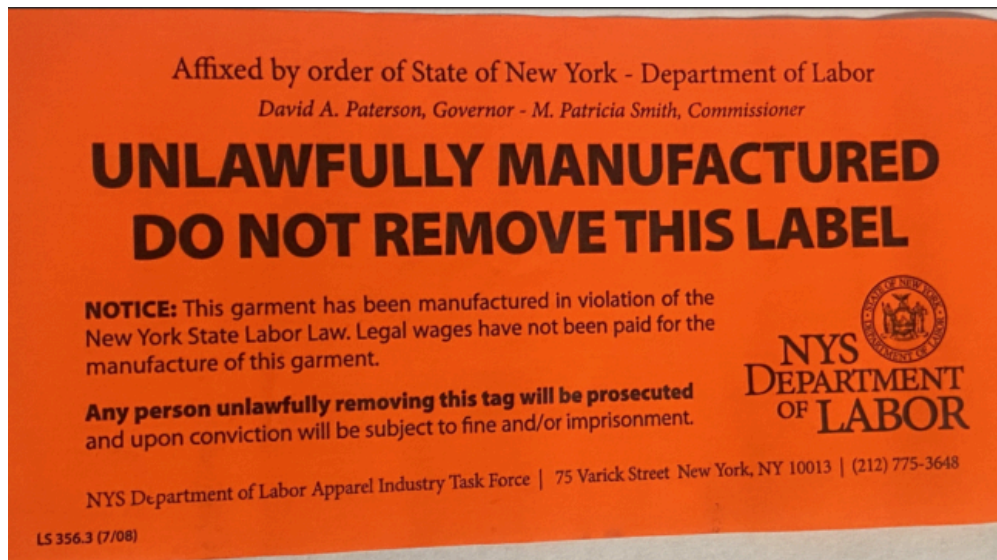
## Existing state precedents and recommendations

To achieve similar results, states should enact their own state-level hot goods provisions, to prevent goods produced through illegal child labor from entering the stream of commerce. This would involve the state labor department or its equivalent and/or state attorney general to seek an injunction preventing shipment of products made using illegal child labor.

California and New York have provisions that contain elements of this concept in relation to the garment industry. In California, garment manufacturers must be registered with the state; if apparel is manufactured without registration, state labor enforcers may confiscate the garments and destroy or dispose of them, “provided that the goods shall not enter the mainstream of commerce and shall not be offered for sale.”<sup>64</sup> There is a prompt hearing process if a party wishes to contest the confiscation.

In New York, the attorney general can petition in court to prevent the shipping, delivery, sale, or purchase by any manufacturer, contractor, or retailer of apparel produced in the past 180 days in violation of the state’s wage laws.<sup>65</sup> The state labor department can also confiscate apparel as well as equipment from any manufacturer or contractor violating the law if they have had two or more separate violations within the prior three-year period. As in California, there is a prompt hearing process available to challenge this action.<sup>66</sup> Pursuant to this provision, the state labor department in 2009 seized hundreds of pieces of clothing from a manufacturer, including police uniforms and equipment (Sulzberger 2009).

New York law also has a “tagging” provision that allows the labor department to affix a six-inch tag to any piece of apparel made by employees whose wage rights were being violated. The tag bears the words “unlawfully manufactured”; removing the tag is a misdemeanor for anyone except the labor department or ultimate consumer.<sup>67</sup> This provision provides a lighter touch, obviously, than confiscation of goods or stopping them from entering the stream of commerce; however, apparel with an “unlawfully manufactured” tag affixed would presumably be unappealing in department stores and would affect the value of the product. It also serves the purpose of transparency for consumers.



Sample tag used by New York State Department of Labor in or around 2008– 2010. Reprinted with permission.

Vermont also has a provision along these lines: it prohibits knowingly selling, taking orders for future delivery of, or possessing with intent to sell, products made with child labor unlawful under Vermont law or “under conditions that would be in violation of these provisions if the employment had occurred” in Vermont, with potential penalties of up to \$10,000 for violation.<sup>68</sup>

Other states could pass similar provisions in relation to child labor. These laws could:

- Enable the state labor department and/or attorney general to seek an injunction to prevent shipment, delivery, or sale of any products made with illegal child labor
- Enable the state labor department to confiscate goods made with illegal child labor
- Allow equipment confiscation, when repeat violations occur in a short time period
- Enable the state labor department to affix a tag to goods of any kind produced using illegal child labor, so that consumers will be aware of the provenance of such goods, and can use such knowledge in making purchasing decisions
- Prohibit sale of products produced with illegal child labor

## Create a private right of action and/or whistleblower program for child labor violations

### Private right of action

Currently, the only entities that can enforce child labor laws are government agencies. But many critical workplace laws, such as minimum wage and anti-discrimination statutes, do not rely solely on government enforcement; instead, they also allow workers to file

lawsuits in court. Private lawsuits have always been a pillar of the enforcement landscape, playing an important role in safeguarding workers' rights.

Creation of a private right of action (the opportunity to file a case in court) in relation to child labor violations, with damages for the victims, would create redress for children who have been exploited at work and also incentivize reporting. Inclusion of attorneys' fees and costs, as in other private rights of action, would enable lawyers to take on these cases.<sup>69</sup> This approach would add needed resources in addition to the government, at no cost to the public, to address violations.

## Whistleblower right of action

Whistleblower laws exist in many contexts; they expand the pool of potential enforcers while incentivizing reporting of violations. The Securities and Exchange Commission, for example, awards whistleblowers 10% to 30% of the money collected if they have provided high-quality original information leading to an enforcement action of over \$1 million (US SEC n.d.). The federal False Claims Act, and dozens of state false claims acts, allow whistleblowers, known as *qui tam* plaintiffs, to sue entities that are defrauding the government, and to recover damages and penalties on the government's behalf. Whistleblowers receive a percentage of the recovery, as well as protection against retaliation. California's Private Attorney General Act (PAGA) similarly allows individuals to sue on behalf of the state for penalties for certain labor code violations; PAGA whistleblowers receive a portion of the penalties recovered, and penalties collected generate funds used for labor enforcement (Deutsch, Fuentes, and Koonse 2020).<sup>70</sup> Illinois' new temporary worker protection law allows interested parties ("an organization that monitors or is attentive to compliance with public or worker safety laws, wage and hour requirements, or other statutory requirements") to bring an action for civil penalties.<sup>71</sup>

In many situations where children are being illegally employed, third parties—coworkers, school officials, community organizations, or customers—become aware of the violations. Creation of a whistleblower right of action, with retaliation protections, would provide victims of child labor violations, as well as adult coworkers, teachers, customers, community organizations, or others aware of such violations, with a tangible way to take action to stop the misconduct. A whistleblower program or cause of action in relation to child labor could cover all violations, or be limited to those related to hazardous occupations. As with creation of a private right of action, a whistleblower program would add needed resources in addition to the government to combat child labor.

## Enact stop work order statutes to enable immediate action when there are ongoing, egregious and dangerous child labor violations

Stop work orders allow enforcement agencies to immediately order cessation of operations at one or more worksites based on a determination that there is an active, ongoing violation of the law. They are available under a wide range of local and state laws

involving an array of types of illegality. For example, building, fire, or housing code inspectors in some instances have authority to issue stop work orders when they determine a site has unsafe work or conditions (NYC Buildings 2023; Polk County 2023).<sup>72</sup> While not technically a stop work order, New York’s Apparel Industry Task Force, which investigates labor violations in the apparel industry, has the power to immediately evacuate and close any premises that a specially trained investigator deems to be a serious violation of the fire code.<sup>73</sup>

A number of states allow for stop work orders in relation to violations of workplace laws, such as workers compensation and prevailing wage statutes.<sup>74</sup> New Jersey law allows stop work orders for minimum wage violations to be issued “at one or more worksites or across all of the employer’s worksites and places of business.”<sup>75</sup> New Jersey’s labor department has extensively exercised this authority (NJ DOL 2023a). For example, in 2023, the department issued stop work orders to 27 Boston Market locations based on wage violations, and recovered \$630,000 for underpaid workers in less than a month (NJ DOL 2023c).

Because of their stark impact, stop work orders generally incorporate due process rights for the employer, including swift ability to challenge an order. Stop work orders also have consequences for workers, who will be unemployed while an order is in effect. To address this shortcoming, a 2023 Massachusetts bill creating stop work authority for certain wage violations would require the employer to pay workers for the first ten days the order is in effect.<sup>76</sup>

Overall, stop work orders are a powerful tool: They enable a government agency to halt dangerous conditions or severe violations, but require consideration of due process concerns and the impact on workers. Creating such authority for violations of child labor laws would allow labor enforcers to immediately address situations in which minors’ health and wellbeing is at serious risk because of ongoing violations.

## **Require and effectively use employment certificates/work permits for minors to prevent violations**

### **Landscape**

An employment certificate, also known as a work permit or working papers, is a legal document stating a minor is eligible for employment. They are generally issued either by the state labor department or the minor’s school or school system, and generally require proof of age, parental permission, school permission, and/or medical clearance, as well as in some instances information about the place, type, and hours the minor will be working. A majority of states, plus D.C. and Puerto Rico, require an employment certificate in at least some instances. State laws vary in relation to the age below which they are required. Washington requires employers wishing to hire minors to obtain a specific minor work permit endorsement on their business license (WA L&I n.d.).

Employment certificates enable employers, parents, the state, and schools to be aware that a child is working. In many cases, the forms and process serve an important public education role, as they inform employers, teens, and parents about child labor laws and provide contact information for labor authorities. Work permits also protect teenagers' access to education, by making schools aware that minors are working in case a job begins to interfere with school. They also ensure that parents or guardians have given permission for a child to work. Application forms may also require the employer to list the minor's job title, duties, and/or hours (MA DOLS n.d; WA L&I 2018; OK DOL 2022).

Work permit requirements in some cases can help play a role in preventing violations. The Maine Labor Department in 2023 reported that it had denied about 200 of the 4,700 work permit applications received, because they were for a hazardous occupation prohibited for minors (Popp 2023). Such denial does not ensure that the prohibited work will not occur, but by pressing "pause" on the employment, perhaps makes it less likely. Indeed, researchers at the University of Maryland analyzing federal child labor violation trends have reached preliminary findings showing lower violation rates in states with work permit requirements.<sup>77</sup>

The requirement of employment certificates also helps with enforcement of child labor laws: when minors are working at a job and the employer has not complied with the employment certificate requirement, this can serve as a red flag that other child labor infractions may be occurring.

## Recommendations

States that do not currently have employment certificate or work permit requirements should enact them. States with such requirements should review the process, including the application form and physical permit, to assess whether there are ways to include additional information or update the process to provide more effective education about laws or more likely prevention of violations. For example, perhaps minors could be required to pass an online test about child labor and other workplace laws in order to obtain the employment certificate, much like the process for a drivers' license. Employers could also be required to obtain special minor work permit endorsements on their business licenses, as is the case in Washington, and to complete training on child labor laws as well.

## Require workers' rights education in schools

Research shows that large percentages of workers lack knowledge about their rights at work (Rankin and Lew 2018; Cain Miller and Tankersley 2020). With less life and work experience, minors are likely even less aware of their workplace rights than adults. Education alone will not stop child labor violations, but the knowledge gap surely exacerbates the problem. If children with jobs, as well as others in the community, are more familiar with workplace rights, this helps prevent violations and increases the possibility that violations will be flagged and reported.

California in 2023 enacted a law adding workplace rights education to the curriculum in all public high schools, covering child labor, wage and hour protections, workplace safety, and more.<sup>78</sup> More states should pass similar laws, to help prevent and address child labor violations. A bill to this effect, SB 7693, has been proposed in New York in the 2024 legislative session. Such laws would also help with the broader knowledge gap about workplace rights in general (Gerstein 2022b).

## Require public disclosure of child labor violations

Requiring public disclosure of child labor violations serves the dual purpose of deterring violations because of corporations' concerns about bad publicity, while also informing consumers about products they wear, eat, and use every day.

Common sense suggests that publicizing a corporation's labor misdeeds would deter violations by similar employers. A recent study confirms this premise, finding that OSHA press releases deterred violations by peer employers (those in the same industry and within a geographical radius). Specifically, "publicizing a facility's violations led other facilities to substantially improve their compliance and experience fewer occupational injuries"; further, "OSHA would need to conduct 210 additional inspections to achieve the same improvement in compliance as achieved with a single press release" (Johnson 2020). While the study focused on workplace safety and health, the deterrent impact is likely similar with child labor, perhaps even greater because of extensive publicity surrounding child labor and accompanying public disapproval.

Several state laws facilitate public disclosure of workplace law violations. New Jersey recently passed the Workplace Accountability in Labor List, under which the state labor department publicly posts a list on the agency's website of certain businesses with outstanding liabilities to the state resulting from wage, benefit and/or tax law violations; people and entities placed on the list may not contract with any public body until the liabilities are resolved.<sup>79</sup> (NJ DOL n.d.; NJ DOL 2023b). New York's labor department can post a notice for 90 days in an area visible to the general public, informing them of an employer's willful wage violations.<sup>80</sup>

Some government labor enforcement agencies maintain publicly accessible databases listing investigations and violations data, including Massachusetts, Texas, and San Diego County, as well as OSHA, the Wage and Hour Division, and other sections of the U.S. DOL (MA AG n.d.; SD OLSE n.d.b.; TX WC n.d.; USDOL n.d.c). Legislation could require state agencies to post non-confidential child labor enforcement data and specific case information on their websites or issue annual reports. Agencies can also do this on their own without legislation.

## Local governments can also play a role in fighting child labor

In recent years, localities have been increasingly involved in advancing and enforcing workers' rights in various ways: passing and enforcing laws; leveraging procurement, licensing and permitting to drive compliance; conducting education and outreach; and exerting public leadership (Gerstein and Gong 2022). Such tools can help address child labor.

Many opportunities for local action on child labor require collaboration with state or federal agencies. Local government officials, then, should build lines of communication and identify a point of contact with the relevant child labor enforcers in their jurisdiction.

Where **local labor agencies** exist, they can educate the public, and also screen for and refer potential cases. Around two dozen localities have created local offices of labor standards or the equivalent that enforce local labor and wage laws, among other things (Gerstein and Gong 2022). These agencies generally collaborate extensively with worker, immigrant, and community organizations (Deutsch and Gerstein 2023), and can help educate workers and employers about child labor laws. They can also routinely screen for child labor in their investigations, and make appropriate referrals to state or federal child labor enforcers.

**School officials** can educate students and families about child labor laws, the work permit process, and age-appropriate employment opportunities. They can also help identify students who may be working in prohibited occupations or during prohibited time periods, and refer cases to state or federal child labor enforcers.<sup>81</sup> Most importantly, school officials can build lines of communication with labor enforcers, so that there is a point person to reach out to if child labor concerns arise.

**Local health officials and human services providers** can help educate the communities they serve about child labor laws and about how to report violations. They can also help identify violations in the course of their work. Again, the need for a point of contact is clear.

Local governments can have **procurement standards**, requiring clear and complete compliance with child labor laws by government contractors and their supply chains. Already-existing statutes requiring general legal compliance by government contractors could be deployed for this purpose, or new laws could specifically require child labor compliance, with contracting consequences for egregious, willful, widespread, repeat, or unresolved violations. Even without a statute on point, procurement officials could require simply disclosure of past labor violations, including child labor, as part of the contracting process.

Local agencies that issue **licenses and permits** can require applicants to demonstrate that they have no unresolved record of child labor violations, as a condition of receiving or renewing the license or permit. Existing statutes may allow for license or permit denial based on unresolved violations or a history of such violations, or if not, new ordinances could be enacted. Such use of licenses and permits to address workplace law issues is



occurring in several jurisdictions. In California, Santa Clara and San Diego Counties have both established programs in which restaurants that owe back wages pursuant to state labor department orders can have their food permits suspended if they fail to remedy such violations (SD OLSE n.d.a.; SC OLSE 2022). A new Boston ordinance requires workplace safety training, preparation, and ongoing monitoring as a condition of receiving a building permit for certain construction projects (Boston 2023).

**Training local health, building, and other inspectors** on child labor laws can help them spot and refer potential violations. Many city and county inspectors routinely inspect businesses, and they may encounter child labor violations in the course of their work, as occurred with a USDA inspector profiled in a news story about children working in a slaughterhouse (Dreier 2023b). Local health, building, and other inspectors cannot be made responsible for solving child labor; they already perform jobs critical for public health and safety. However, to avoid missed opportunities, they can be provided with information about identifying child labor laws, and most importantly, a labor enforcement point person for referrals or concerns.

All local government officials can exercise **public leadership**, and help educate the public about child labor laws, as well as about violators in their jurisdiction. Elected officials in immigrant-dense communities can be aware of the potential for exploitation of migrant children and develop relationships with the relevant labor enforcement agencies. Local leaders can also advocate for stronger state child labor laws and against proposed rollbacks.

## Existing state and federal bills

In 2023, several federal bills were introduced in Congress to address the growing child labor crisis. They range from modest to more comprehensive. Three are bipartisan, suggesting potential for positive action on this issue.

*The Children Harmed in Life-threatening or Dangerous (CHILD) Labor Act*<sup>82</sup> is a comprehensive bill, not yet bipartisan, that would create lead corporation liability for violations by contractors and subcontractors; increase civil monetary penalties; establish monetary damages for victims; require federal contracts to explicitly prohibit use of illegal child labor; and grant the federal labor department stop work order authority as well as power to affix warning labels to goods manufactured with oppressive child labor. It also contains annual reporting requirements.

The bipartisan *Preventing Child Labor Exploitation Act*<sup>83</sup> would prohibit federal agencies from contracting with companies that have violated federal child labor laws or that employ vendors that have failed to address child labor infractions. Corporations seeking federal contracts would be required to disclose the preceding three years' of child labor and worker safety violations by the company itself as well as by their contractors, with stiff penalties for failure to report. The labor secretary would determine corrective measures for a company and/or their contractors to remain eligible for contracts, and would also create an annual list of companies ineligible for federal contracts based on serious,

repeated, or pervasive child labor violations. The bill also calls for a federal study on the prevalence and nature of child labor among federal contractors.

The *Child Labor Accountability Act of 2023*,<sup>84</sup> also bipartisan, would expand the time period for triggering the federal “hot goods” provision in a child labor investigation, from the current 30 days to 90 days (consistent with the time period for minimum wage violations). It would also require the federal labor department to report annually to Congress on its child labor work.

Finally, the bipartisan *Stop Child Labor Act*<sup>85</sup> would increase maximum penalties for violations, establish new criminal penalties, allow victims to file private lawsuits for damages, and create a national child labor advisory committee and a grant program to help employers avoid violations.

The existence of multiple bipartisan federal proposals gives reason for optimism, as they suggest potential for bipartisan state action as well.

A number of state bills has been proposed, and several have passed, to strengthen child labor laws (Mast 2023b). Most focus to date has been on increasing penalty amounts for violations. As discussed above, this measure is important, yet alone will be insufficient to meaningfully deter and address child labor violations. With 2024 state legislative sessions now in progress, state lawmakers should consider a package of laws that would draw upon a range of approaches that, combined, are likely to change employer practices and stop child labor violations. One promising example is a multifaceted bill introduced in Colorado in January 2024: *HB 24-1095* would increase penalties, provide monetary damage payments for affected children, require disclosure of child labor case violation information as a public record (redacting information identifying the minor), eliminate existing criminal liability for parents and guardians, and create anti-retaliation protections for whistleblowers, among other things.

## Conclusion

Multiple policy options can help address the current child labor crisis and prevent violations. As policymakers and advocates consider options, several guiding points can be helpful. First, virtually all of the policy options outlined in this report have precedents of some kind within existing laws. They are generally not ground-breaking. Second, there is no silver bullet; no one solution for this complex and multifaceted problem. The best approach will include a package of policies. Finally, there is urgency to taking action on this issue. Curtailing child labor violations is in line with important values, and crucial for keeping vulnerable children safe.

# Acknowledgments

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## Notes

1. A table with a 50-state-plus-D.C. survey of child labor laws, focusing primarily on enforcement, specifically, civil and criminal penalties available under state laws, is available upon request.
2. State labor agencies have different names depending on the state; they generally have one or more of the following terms in their names: labor, industries, employment, workforce, or similar nomenclature.
3. MS Code §71-1-23 (2020).
4. Because of its focus specifically on enforcement, this report also does not address other essential areas of policymaking related to child labor, such as the potential role of social services agencies and other government actors to meet the myriad needs of children exploited at work, including particularly vulnerable migrant children.
5. Excessive caseloads and sub-par pay relative to other agencies create retention challenges. (Rainey and Rolfson 2023).
6. U.S. Department of Labor OSHA Federal Annual Monitoring and Evaluation (FAME) Reports provide annual analyses of state plan effectiveness, often including information about staffing levels (USDOL n.d.b.). For sample discussions regarding staffing, see FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) [Report for South Carolina](#) Department of Labor, Licensing and Regulation, Office of Occupational Safety and Health and FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) [Report for Industrial Commission of Arizona](#), Division of Occupational Safety and Health.
7. In the past decade, a number of cities and counties have established their own offices of labor standards that play a worker protection role, including often enforcing municipal minimum wage and paid sick leave laws, among others. (Gerstein and Gong 2022). These agencies often collaborate closely with immigrant communities and worker organizations and could play outreach, referral, convening, or policy development roles in relation to the upsurge of child labor. Cities and counties without local labor offices can consider establishing such agencies within their jurisdictions.
8. Pay increases may also require reclassification of labor investigators at higher levels within civil service systems.
9. In Maine, the penalty range for the first violation is \$250 to \$5,000; for intentional or knowing violations involving minors under 14 or of hazardous work prohibitions, the penalties for repeat violations within three years range from \$5,000 to \$20,000 (second violation) and \$20,000 to \$50,000 (third or subsequent). 26 ME Rev State § 781 (2022).

10. Actually, South Carolina’s lowest available monetary penalty is no monetary penalty, and instead merely a “written warning of the violation.” A table with child labor laws and penalties for violations in each state can be provided upon request.
11. 26 ME Rev. Stat. § 781 (2022).
12. 19 DE Code § 509 (2022), CA Labor Code § 1288(a).
13. Colo.Rev.Stat.§8-12-115(4)(a), ID Code § 44-1305 (2022), IN Code § 22-2-18.1-30 (2022).
14. WI Stat § 103.82 (2022).
15. 26 ME Rev. Stat. § 781 (2).
16. Cal. Code Regs. tit.8 § 11780, CA Labor Code § 1288 (2018).
17. MN State § 181A.12 (2022).
18. Colo. Rev. Stat. § 8-12-115(4)(b)(II).
19. New York Labor Law § 141(1).
20. Colo. Rev. Stat. § 8-12-115(4)(a).
21. NY Labor Law § 141 (1); RI Gen. L. § 28-3020; VA Code § 40.1-113(A).
22. NY Labor Law § 141(1).
23. For more details on remediation programs, see the Centre for Child Rights and Business, a non-governmental organization that provides rapid response remediation service to businesses wishing to address the needs of child labor victims in their supply chains (The Centre n.d.).
24. For a discussion of general criminal justice concerns in relation to prosecution of workplace rights violations, see Damelio 2021, Levin 2021, Rosado Marzán 2020, Gerstein and Seligman 2018, Levin 2018a, 2018b, Migiel-Schwartz 2021. For a discussion of practical concerns involved in prosecuting worker exploitation cases, see Gerstein 2021, 26-28.
25. MD Labor and Employment Code § 3-216 (2022).
26. LA Rev Stat § 23:231 (2022).
27. Colo. Rev. Stat. § 8-12-116 (2).
28. 43 Pa. Stat. § 40.11.
29. KS Stat § 38-612 (2021).
30. MS Code § 71-1-29 (2020).
31. See, e.g., [New York Penal Law §260.10](#), [WI Stat § 948.03](#) (2015).
32. Rather than contracting, subcontracting, or using staffing agencies, large corporations also can directly hire workers as in-house employees, as meat-processing giant JBS did after its on-site janitorial contractor was found to have committed extensive, serious child labor violations (JBS Foods 2023).
33. D.C. Code §32-1303(5). The statute also requires indemnification by the subcontractor for violations, unless the general contractor’s lack of prompt payment to the subcontractor caused the

violations.

34. While it is silent regarding indemnification, California’s law does not prohibit a client employer from pursuing remedies against a contractor for liability caused by the contractor’s violations.
35. Cal. Labor Code § 2810.3.
36. Cal. Labor Code § 218.7; Hawaii S.B. 415 (2023); 820 ILCS § 115/13.5, Md. Code, Lab. & Empl. § 3-507.2; Minn. Stat. § 181.165; NJ Rev Stat § 34:11-67.1; New York Labor Law § 198-e; NRS § 608-150; Code of Virginia § 11-4.6(c).
37. 820 ILCS 175/85; RCW 49.17.490.
38. Temporary staffing firms must indemnify their client for money found owing as a result of certain labor violations, unless their contract provides otherwise. D.C. Code §32-1303(6).
39. New York Labor Law § 134.
40. New York Labor Law § 345-10(a), 345-a, 345-10(b).
41. California Labor Code 2673.1(a-b). The contractor, manufacturer, or brand guarantor may separately seek indemnification (CA DIR n.d.).
42. 820 ILCS 175/42, N.J. Stat. § 34:8D-7(b). In New Jersey, the temporary agency and third-party client are jointly and severally liable for any violations of this provision.
43. N.J. Stat. § 34:8D-7(a).
44. City of Newark Chapter 9, §9-1.4.
45. HB23-1196. To avoid double recovery, damages from a lawsuit are reduced by the amount of workers’ compensation benefits received.
46. NJ Code 34:15-10.
47. 820 ILCS 305 §5.
48. *Maynerich v. Little Bear Enterprises, Inc.*, 82 N.M. 650 (N.M. Ct. App. 1971), *Blancato v. Feldspar Corp*, 203 Conn. 34, 522 A.2d 1235 (1987), and *Whitney-Fidalgo Seafoods, Inc. v. Beukers*, 554 P.2d 250 (Alaska 1976).
49. *Boyd v. Permian Servicing Co., Inc.*, 113 N.M. 321 (1992), *Maser v. L. and H. Welding and Machine Co.*, 1 P.3d 642 (2000).
50. A spreadsheet summarizing provisions with compensation multipliers in child labor violation workers’ compensation cases is available upon request.
51. RI Gen L § 28-33-22 (2022).
52. Fla. Stat. 440.54.
53. MA Gen L ch 152 § 28 (2018).
54. MS Code § 71-3-107 (2013).
55. Wis. Stat. § 102.60.
56. Ark. Code § 11-9-504, Okla. Stat. tit. 85a § 48.

57. To make it more likely that the minor and/or their family receive the additional compensation and decrease the risk of default by the employer, Pennsylvania law makes payment of such additional compensation immediately due and payable. [PA Workers' Compensation Act §320\(c\)](#).
58. [Fla. Stat. 440.54](#), [Md. Code, Lab. & Empl. §9-606](#), [MS Code § 71-3-107 \(2013\)](#), [NJ Code 34:15-10](#), [NY WCL § 14-A](#), [PA Workers' Compensation Act §320](#), [Cal. Lab. Code §4557](#), [NH Rev Stat § 281-A:33 \(2021\)](#). Ohio law provides for recovery of the additional payments from the employer only if workers' compensation insurance has been provided by the state-run workers' compensation fund. [ORC § 4123.89](#).
59. [RI Gen L § 28-33-22 \(2022\)](#), [AZ Rev Stat § 23-905 \(2019\)](#), [MA Gen L ch 152 § 28 \(2018\)](#).
60. For more information on the role of government procurement in driving job quality, see [Jobs to Move America U.S. Employment Plan](#) and related documents.
61. In the rare situation in which such statutes would make it impossible to procure needed goods or services, a modestly delayed effective date and/or monitoring requirements could help address the situation.
62. [ILEPI n.d.](#); [New Orleans Mayor's Office 2021](#); [Toledo Mun. Code § 187.12](#); [Gerstein and Gong 2022](#).
63. [29 U.S.C. §§ 212\(a\), 215\(a\)\(1\)](#). A bipartisan Senate bill, the Child Labor Accountability Act of 2023, would expand the amount of time the federal labor department has to trigger the hot goods provision in child labor cases, from the current 30 days to 90 days, consistent with the hot goods time period for minimum wage violations.
64. [California Labor Code §2680](#). California law also allows such confiscation when garments are manufactured using unlawful industrial homework. [California Labor Code § 2664](#).
65. [New York Labor Law § 345\(10\)\(c\)](#).
66. [New York Labor Law §345-b](#).
67. [New York Labor Law § 341-a](#).
68. [21 V.S.A. § 453](#).
69. Forced arbitration would be less likely to thwart child worker cases because many state laws have limitations on minors' ability to contract.
70. Although the U.S. Supreme Court recently held in [Viking River Cruises, Inc. v. Moriana \(2022\)](#) 596 U.S. \_\_\_ [142 S.Ct. 1906] that the Federal Arbitration Act preempts individuals who have signed forced arbitration provisions from bringing PAGA claims in relation to violations they personally have experienced, it left open the question of whether a worker could file a PAGA lawsuit on behalf of other workers. The California Supreme Court recently answered that question in the affirmative. [Adolph v. Uber Technologies, Inc. S274671](#), California Supreme Court, July 17, 2023.
71. [IL HB 2862, 2023-2024, 103rd General Assembly](#).
72. [Minnesota Administrative Rules 1300.0170](#).
73. [New York Labor Law § 344\(2\)\(b\)](#).
74. [CT Gen Stat § 31-288\(g\)](#); [Florida Statutes Title XXXI, 440.107](#); [Mass. Gen. Laws ch. 152, §25C](#); [New York WCL §141-a\(4\)](#), [Connecticut Public Act 23-162 \(2023\)](#).

75. NJ Rev Stat § 34:11-56.35(d).
76. [Massachusetts S.1158/H.1868](#) (193rd).
77. Ashish Santosh Kabra; Assistant Professor, Robert H. Smith School of Business, University of Maryland; and Fred (Jiacong) Bao; Ph.D. student, Robert H. Smith School of Business, University of Maryland; email to author, January 24, 2024.
78. [California AB800](#) (2023–2024).
79. NJ Rev Stat § 34:1A-1.16.
80. New York Labor Law § 219-c(2).
81. One limitation on school official action is the federal Family Educational Rights and Privacy Act (FERPA), which prohibits teachers or school officials from sharing details about individual students without parental consent. However, school officials may share general information with labor law enforcers, such as the name of employers where students not specifically identified are working. Also, FERPA defines certain information as “directory information”: information that would not generally be considered harmful or an invasion of privacy if disclosed, such as name, address, phone number, date and place of birth, dates of attendance, and other similar information. 34 C.F.R. § 99.3 (US DOE, n.d.). Directory information may be disclosed to third parties, such as labor investigators, if a school has given certain notices to parents beforehand. In addition, FERPA permits disclosure of otherwise protected information in response to a subpoena.
82. S. 3163, 118th Cong. (2023).
83. S. 3139, 118th Cong. (2023).
84. S. 3142, 118th Cong. (2023).
85. S. 3051, 118th Cong. (2023).

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