



*** FLSA-774 ***

September 6, 1951

In answer to your telephone request, I am giving below a summary of the child labor provisions of the Fair Labor Standards Act as they apply to the employment of minors in agriculture. I am also enclosing for your reference a copy of an Interpretative Bulletin (Part 450) which discusses the scope and meaning of these provisions in more detail.

As you doubtless know, the Fair Labor Standards Act, as amended, contains a provision (section 12(c)) prohibiting the employment of oppressive child labor in interstate or foreign commerce or in the production of goods for such commerce. It also contains a provision (section 12(a)) prohibiting the shipment or delivery for shipment in such commerce of goods produced in an establishment where oppressive child labor has been employed within 30 days before removal of the goods. The term "oppressive child labor" is defined in the Act to include generally the employment of young workers under the age of 16 years in any occupation. This section, however, provides for a minimum age of 18 years in occupations found and declared by the Secretary of Labor to be particularly hazardous or detrimental to health or well-being for minors 16 and 17 years of age. Pursuant to this authority conferred by the Act, various hazardous occupations orders have been issued from time to time. For the purpose of clarifying the scope and effect of these orders with respect to agricultural employment, I adopted in July of last year an amendment to the pertinent provisions of the Code of Federal Regulations which provides that such orders do not apply to employment in agriculture. The section further authorized the Secretary, with respect to employment in occupations other than manufacturing and mining, to issue regulations or orders lowering the age minimum to 14 years where he finds that such employment is confined to periods which will not interfere with the minors' schooling and to conditions which will not interfere with their health and well-being. Pursuant to this authority, a regulation has been issued which is now in effect permitting the employment of minors between 14 and 16 years of age for the periods and under the conditions therein set out in all occupations other than those specified. The text of this regulation appears in the appendix of the above mentioned bulletin which I am enclosing. You will note that this regulation limits permitted employment to periods outside of school hours in accordance with the foregoing legislative guide (underlined phrase).

The Act provides two specific exemptions from its child labor requirements which are of wide general applicability in the field of agriculture. One exempts employment by a parent or a person standing in a parent's place of his own child or of a child in his custody under the age of 16 years in any occupation with certain exceptions. This exemption applies to such employment regardless of whether it occurs during school hours. The other exemption to which I refer (section 13(c)(1)) of the Act applies to employment of children in agriculture outside of school hours for the school district where they live while so employed. I presume that it is this provision which primarily interests you.

The applicability of the provision exempting employment of children in agriculture depends in general upon whether such employment conflicts with hours during which the school of the district which the child normally attends or would normally attend is in session. The provision does not depend for its application upon the individual student's requirements for attendance at school. For example, on part of a day by the superintendent or the school board, the exemption would not apply if school was in session then. On the other hand, references to the provision in the legislative history clearly show that Congress intended the exemption to apply during those periods when the school would not be in session in order that the children might help out in some crop emergency. Accordingly, where the particular school for the district which a minor normally attends or would normally attend has a crop vacation, the performance of farm work by such a minor during the period of the crop vacation would be "outside of school hours for the school district" and exempt under section 13(c) even though another school or schools in the district remained open. The phrase "where such employee is living while he is so employee" is considered to refer to the physical location where the minor lives at the time of his employment irrespective of whether he may be living there temporarily or permanently.

In the not uncommon situation where due to shortage of classroom space or of teachers a school district provides so-called "split sessions" for its regular course of instruction, the children who would normally attend school for a given period during the day are divided into two groups, each of which is afforded equal periods of instruction during equally desirable times of the day. In such a situation, whether a child attends the early or the late session of school, the school hours for the session are in a very real sense the "school hours for the school district" in so far as the attendance at the district school is concerned. Therefore, the children, who, for example, attend the early session of the district school may be employed in agriculture whenever the morning group is not in session.

For your further information, I am enclosing copies of Child Labor Bulletin No. 101, a Guide to the Child Labor Provisions of the Fair Labor Standards Act, and Child Labor Bulletin No. 102, What Farmers Who Hire Workers Should Know about Child Labor Provisions of the Federal Fair Labor Standards Act, which may be of assistance to you and Mr. **Name***. I am returning Mr. **Name*** letter, as you requested.

Yours very truly,

Secretary of Labor

Enclosures

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).