

PROTECTING WORKING CHILDREN IN THE UNITED STATES

**THE GOVERNMENT'S STRIKING DECLINE IN CHILD
LABOR ENFORCEMENT ACTIVITIES**



A Child Labor Coalition Report

Washington, DC

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ABOUT THE CHILD LABOR COALITION

The Child Labor Coalition (CLC) was formed in 1989, in response to escalating child labor violations in the United States and abroad. The CLC is committed to strengthening child labor laws and enforcement on a state, federal, and international level and ending child labor exploitation worldwide.

The mission of the Child Labor Coalition is to create a network for the exchange of information about child labor; provide a forum and a unified voice on protecting working minors and ending child labor exploitation; and develop informational and educational outreach to the public and private sectors to combat child labor abuses and promote progressive initiatives and legislation. CLC co-chairs are the American Federation of Teachers and the National Consumers League. The CLC is housed at the National Consumers League

CLC Advocacy Members

A Minor Consideration	Kids Campaign Against Child Labor
American Ethical Union	MANA, A National Latina Organization
AFL-CIO	Migrant Legal Action Program
American Federation of School Administrators	National Association of Social Workers
American Federation of Teachers	National Association of State Directors of Migrant Education
Americans for Democratic Action	National Consumers League
Association of Farmworker Opportunity Programs	National Education Association
Calvert Group, Ltd.	Research Associates of America
Church Women United	RUGMARK Foundation USA
Farmworker Justice	The Crafts Center at CHF International
Forgotten Children	The Ramsay Merriam Fund
General Federation of Women's Clubs	United Food and Commercial Workers International Union
International Center on Child Labor and Education (of the Global March Against Child Labor)	United Methodist Church, Women's Division
International Initiative to End Child Labor	Walden Asset Management
Issue Dynamics	

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INTRODUCTION

In June 2005, the Child Labor Coalition (CLC) published a report showing that enforcement activities by the U.S. Department of Labor (DOL) under the child labor provisions of the Fair Labor Standards Act (FLSA)¹ had declined markedly over the four-year period ending September 30, 2004.² The CLC herein amends this information with DOL data for an additional year, through September 30, 2005.³

The new data indicate that DOL's troubling trend of lax enforcement of the child labor laws has continued. The CLC is issuing this report to highlight the new enforcement data and to express its deep concern over DOL's seeming indifference to the safety and health of working children in the United States.

The CLC describes below what the more recent data show, and compare them with data for earlier years.

NUMBER OF CHILD LABOR INVESTIGATIONS

In fiscal year 2005,⁴ DOL's Wage and Hour Division (which enforces the federal child labor laws) conducted 1,784 child labor investigations. This is a drastic 31.5 percent decline from the 2,606 child labor investigations conducted in fiscal year 2004. The 1,784 child labor investigations in 2005 represent the lowest number of child labor investigations in at least 10 years.⁵ The second-lowest number of child labor investigations in the last 10 years was in fiscal year 1998, when 2,267 investigations were conducted. The number of investigation conducted in fiscal year 2005 was thus 21.3 percent lower than in fiscal year 1998.

This drastic decline in the number of investigations shows that child labor is no longer a high priority for DOL.

¹ The Fair Labor Standards Act, title 29, United States Code, sections 201-219 (29 U.S.C. 210-219).

² The CLC report, entitled *Protecting Working Children in the United States: Is the Government's Indifference to the Safety and Health of Working Children Violating an International Treaty?*, is available on-line at <http://www.stopchildlabor.org/pressroom/clc%20report.pdf>. Chapter 4 of the report (pp. 16-19) describes the decline in child labor enforcement by DOL.

³ The data for this later period, as well as earlier enforcement data going back to October 1, 1995, were acquired by the CLC from DOL under the Freedom of Information Act. The data are on file with the CLC, and are available for public inspection by contacting the CLC at (202) 835-3323 or by email at darlenea@nclnet.org. All the data in this report, except as otherwise noted, come from DOL's response to this Freedom of Information Act request.

⁴ All data that we have from DOL are based on the federal fiscal year, not the calendar year. The federal fiscal year starts three months before the calendar year. Thus, fiscal year 2005 runs from October 1, 2004, to September 30, 2005.

⁵ We have DOL child labor enforcement data going back only 10 years, to fiscal year 1996.

TIME SPENT ON CHILD LABOR INVESTIGATIONS

In its June 2005 report, the CLC noted that during the four years from fiscal year 2001 to fiscal year 2004, the time spent by DOL in conducting child labor investigations decreased by 21.6 percent.⁶ The new data from DOL show that over the space of one year more — from fiscal year 2004 to fiscal year 2005 — the time spent by DOL in conducting child labor investigations decreased by an additional 20.2 percent. Specifically, in fiscal year 2001 DOL spent 73,736 hours conducting child labor investigations, but this figure dropped to 58,220 hours in fiscal year 2004, and dropped still further to 46,478 hours in fiscal year 2005.⁷

A full-time DOL employee with a 40-hour work week for 52 weeks is paid for 2,080 hours per year, but with time off for vacations, holidays, and sick leave for medical appointments and illnesses, actual working hours in a year are probably closer to 1,700 hours. Thus, the 73,736 investigative hours in fiscal year 2001 would require the equivalent of about 43 full-time employees, the 58,220 investigative hours in fiscal year 2004 about 34 full-time employees, and the 46,478 hours in fiscal year 2005 about 23 full-time employees.

The government conservatively estimates that 3,230,000 children under age 18 are employed during the course of a year.⁸ In view of the large number of children who work, when DOL in fiscal year 2005 assigned the equivalent of only about 23 full-time employees to conduct child labor investigations, each DOL investigator was in effect responsible for assuring a safe and healthy work environment for 140,435 child workers.

⁶ CLC June 2005 report, p. 16.

⁷ The 58,220 figure for fiscal year 2004 is slightly different from the 58,043 hours listed in the CLC's June 2005 report. This is because at that time we did not have the exact number of child labor enforcement hours, but only the percentage (5.8 percent) of all the 1,000,739 hours devoted by DOL's Wage and Hour Division to all the laws it enforces.

⁸ The National Institute for Occupational Safety and Health (NIOSH), relying on reports by DOL's Bureau of Labor Statistics and the Current Population Survey, estimates that 2.78 million 16- and 17-year-old children were employed in 2000, as well as over 450,000 15-year-olds, for a total of 3,230,000 youth workers. *National Institute for Occupational Safety and Health (NIOSH) Recommendations to the U.S. Department of Labor for Changes to Hazardous Orders* (May 2002), p. 3 ("NIOSH Report") ([available at www.cdc.gov/niosh/docs/NIOSHRecsDOLHaz/DOL-recomm.pdf](http://www.cdc.gov/niosh/docs/NIOSHRecsDOLHaz/DOL-recomm.pdf)). The NIOSH Report has no estimate for the number of youth workers under age 15. However, many children under this age do in fact work, as starkly evidenced by DOL's Bureau of Labor Statistics estimate that 134 children under age 15 were killed on the job during the period 1992-1998 (see report on the Youth Work Force, revised November 2000, Chapter 6, p. 60 (Table 6.1), available at www.bls.gov/opub/rylf/pdf). The CLC believes this government estimate of 3,230,000 youth workers significantly under-represents the actual number of youth workers, especially in agriculture, as well as the number of children who may legally work under the age of 15.

CHILD LABOR INVESTIGATIONS IN AGRICULTURE

Agriculture is recognized as one of the most hazardous work environments. For example, data show that youth 15 to 17 years of age working in agriculture have over four times the risk for fatal injury of youth workers in other industries.⁹ Nonfatal occupational injuries and illnesses are also frequent in agriculture. The total number may exceed 200,000 per year, and youth injuries in agriculture tend to be more severe than injuries in other employments.¹⁰ Despite these hazards to children working in agriculture, DOL conducts very few child labor investigations in agriculture.

In fiscal year 2005, for example, only 25 of the 1,784 child labor investigations conducted — just 1.4 percent — involved agricultural employers.¹¹ This represents a huge decline from the number of child labor investigations in agriculture since fiscal year 1999, the earliest year for which DOL supplied data. In fiscal year 1999, DOL conducted 142 child labor investigations in agriculture. In other words, in fiscal year 2005, DOL conducted less than one-fifth of the child labor investigations in agriculture that it did in fiscal year 1999.

DOL needs to remedy, on a top priority basis, its woefully inadequate child labor enforcement activities in agriculture. There is no justification for investigating such a dangerous industry so infrequently.

⁹ NIOSH Report, p. 12.

¹⁰ NIOSH Report, p. 7.

¹¹ DOL records, relying on the North American Industry Classification System (NAICS), show the specific industry sector for each child labor investigation. Three of these NAICS industry sectors are in agriculture: crop production (code 111), animal production (code 112), and support activities for crop production (code 1151).

TIME SPENT ON CHILD LABOR “COMPLIANCE ASSISTANCE”

DOL data starting in fiscal year 2001 record the amount of time spent in “compliance assistance.” This activity involves technical assistance and education designed to encourage voluntary compliance with the child labor laws. It includes speeches to employer and employee groups; preparing and distributing layman’s guides on the child labor laws; preparing check-sheets, questionnaires and similar “self audit” materials to employers; and similar efforts, all designed to make both employers and employees more aware of the child labor laws. Between fiscal year 2001 and fiscal year 2005, the amount of time that DOL devoted to child labor compliance assistance increased more than fourfold — from 1,314 hours to 6,815 hours.

An example of how compliance assistance works appears in DOL’s *Fiscal Year 2005 Performance and Accountability Report*.¹² DOL’s Wage and Hour Division field investigative offices, using mass mailings, sent an “Employers Pocket Guide to Youth Employment” to many employers in their local areas, with the goal of educating these employers about how to comply with the child labor laws. Thereafter, DOL hired a contractor to conduct a telephone survey of a representative sampling of the employers that had received the pocket guide, in order to find out how effective the guide had been in reducing child labor violations. This telephone survey disclosed that the pocket guide “was not relevant to the majority of businesses . . . because they did not employ young workers.”¹³ In other words, DOL had essentially wasted the time that it spent in this effort to encourage voluntary compliance.

The 6,815 hours that the Wage and Hour Division spent in such “compliance assistance” activities in fiscal year 2005 represent the equivalent of about four full time employees. If these three employees were conducting investigations, instead of doing compliance assistance, the number of investigators would have risen from the equivalent of 23 full-time employees to 27, an increase of over 17 percent.

PERCENTAGE OF ALL DOL WAGE AND HOUR INVESTIGATIVE TIME DEVOTED TO CHILD LABOR INVESTIGATIONS

In fiscal year 2005, DOL’s Wage and Hour Division spent 969,776 hours investigating all laws that it enforces,¹⁴ but only 4.8 percent of this investigative time — 46,778 hours — was devoted to child labor investigations. This is the lowest percentage in at least 10 years. As recently as fiscal years 2000 and 2001, 7.3 percent and 7.4 percent, respectively, of all Wage and Hour Division investigative time has been spent in child labor investigations, but since that time the percentage has dwindled markedly.

¹² This report is available at <http://www.dol.gov/sec/media/reports/annual2005>.

¹³ Ibid., Appendix 2, “Significant FY 2005 Audits and Evaluations,” p. 279.

¹⁴ The Wage and Hour Division enforces, in addition to the federal child labor laws, various other laws involving such matters as minimum wage and overtime pay, prevailing wages for employees working for government contractors, farm labor, family and medical leave, immigration, and polygraph testing.

AVERAGE AMOUNT OF EACH CIVIL MONEY PENALTY ASSESSED

In its June 2005 report, the CLC noted that the average civil money penalty assessed by DOL in fiscal year 2004 was only \$717.78 per child who suffered a child labor violation, which is only 6.5 percent of the maximum penalty of \$11,000 that is authorized under the law.¹⁵ In fiscal year 2005, this average rose to \$1,011, an increase of 40.9 percent. This increase is a move in the right direction, but a penalty of \$1,011 is still only 9.2 percent of the maximum penalty.

DOL has a long history of imposing child labor civil money penalties that are too low to deter future violations. A recent DOL investigation of Target Corporation offers a telling example.¹⁶

In order to understand the significance of DOL's resolution of the Target case, it is important to know what remedies are available to DOL when child labor violations occur. It has already been noted that a civil money penalty in the maximum amount of \$11,000 can be imposed against the employer for each child who suffers a child labor violation. The law requires that the size of the civil money penalty must be based on "the size of the business of the person charged and the gravity of the violation . . ." ¹⁷ DOL regulations add that "any history of prior violations" is one of the factors to take into account in determining the gravity of the violation.¹⁸

Another remedy available to DOL is to seek an injunction in federal district court. An injunction bars the employer from violating the child labor laws in the future. An employer that violates such an injunction can be held in contempt of court and be ordered to take whatever corrective action the court deems proper. Injunctions are typically granted only if the employer has a history of earlier violations.

In the Target Corporation case, a DOL investigation disclosed that 29 children in six stores in the Hudson Valley of New York State had been doing work that DOL had found to be "particularly hazardous" for children under age 18 — operating power-driven hoisting equipment (such as forklifts, manlifts, derricks, and cranes) and power-driven scrap paper balers. DOL imposed a penalty of \$92,400, or an average of \$3,186.21 per child employed in violation of the law. In a statement DOL stated that it had increased the fines in the case because Target had previously committed similar violations at other store locations.

¹⁵ The original maximum civil money penalty for each child violation, established in 1974, was \$1,000. In 1990 Congress, concerned that the \$1,000 maximum amount had been eroded by inflation, increased the maximum penalty tenfold to \$10,000, in view of the fact that "recalcitrant employers often considered the lower monetary penalties merely another cost of doing business that was preferable to undertaking more onerous compliance programs." Ellen C. Kearns (ed.), *The Fair Labor Standards Act* (Washington, D.C.: Bureau of National Affairs, 1999), p. 780. On December 7, 2001, DOL issued a regulation that, effective January 7, 2002, increased the \$10,000 maximum penalty to \$11,000 (66 Fed. Reg. 63,501). This thousand-dollar increase was mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, P.L. 101-410, 104 Stat. 890 (as amended by the Debt Collection Improvement Act of 1996, P.L. 104-134, 110 Stat. 1321-373), which requires federal agencies to adjust their civil money penalties periodically to account for inflation, as reflected in the Consumer Price Index. These statutes required that the first upward adjustment be made by October 1996, and then every four years thereafter. In other words, DOL should have made the \$11,000 penalty effective in 1996 instead of 2002, and it should have raised the \$11,000 penalty still further in 2000 and in 2004. If DOL had followed the laws' requirements in this way, the increases in the Consumer Price Index between 1996 and 2004 would have required that the maximum civil money penalty should have been over \$13,000 starting in 2004.

¹⁶ The information about the Target Corporation child labor case comes from the *Daily Labor Report* of April 19, 2006, published by the Bureau of National Affairs in Washington, D.C.

¹⁷ 29 U.S.C. 216(e).

¹⁸ Code of Federal Regulations, title 29, section 579.5(c) (29 C.F.R. 579.5(c)).

DOL's settlement is notable for two reasons. First, given that Target Corporation had annual revenue in 2005 of \$52.6 billion,¹⁹ the \$92,400 penalty was the equivalent of a \$1.70 penalty for a million-dollar corporation. This raises serious questions about whether DOL is following the law's requirement to take account of "the size of the business." It strains credulity to believe that so small a penalty could have any deterrent effect on Target.

Second, despite Target's history of prior violations involving the same kinds of particularly hazardous work by children in other stores, DOL did not go to federal district court to seek an injunction. Thus, in another way, DOL's settlement is unlikely to have any significant deterrent effect.

TOTAL CIVIL PENALTIES ASSESSED COMPARED WITH TOTAL CIVIL PENALTIES COLLECTED

In fiscal year 2005, DOL assessed \$3,744,364 in child labor civil money penalties, but actually collected only 79.2 percent (\$2,966,135) of the assessed civil penalties. The last three fiscal years have witnessed a sharp drop in this percentage: whereas from fiscal year 1998 through fiscal year 2002 well over 90 percent of civil penalties assessed were actually recovered (with 97.0 percent recovered in fiscal year 1997, the peak recovery year). The recovery rate since fiscal year 2002 has dwindled significantly: 93.8 percent in fiscal year 2002, 86.9 percent in fiscal year 2003, 77.4 percent in fiscal year 2004, and 79.2 percent in fiscal year 2004.

There are several possible reasons — none of which reflects well on DOL — for this failure to collect a higher percentage of the civil penalties assessed. First, DOL may not have conducted a sufficiently thorough investigation to support its assertion of child labor violations. In that event DOL would have to reduce the amount of the original penalties assessed. Second, even when the evidence showing violations is solid, if the employer requests a hearing on the matter before an administrative law judge, DOL lawyers then have to get involved in the dispute. Such cases are often settled by reducing the penalty, in order to avoid the time and expense of litigating the dispute. Third, in cases in which the employer does not dispute the child labor penalty but fails to pay the penalty, DOL has to take affirmative steps to force the employer to pay. It is not clear the extent to which DOL is taking action to recover the penalties owed in these types of cases.

Whatever the reason may be for the failure by DOL to collect a larger percentage of child labor penalties that have been assessed, DOL needs to improve its record here to show that it means business in the enforcement of the child labor laws.

¹⁹ Target Corporation Annual Report 2005, p.2 (available on Target's Web site: <http://sites.target.com>).

CONCLUSION

The U.S. Department of Labor has to do much more to combat child labor in the United States. The amount of effort that DOL devoted to this effort in fiscal year 2005 was the lowest in at least 10 years — the equivalent of only 23 full-time employees investigating child labor violations. Even if “compliance assistance” and other activities are included, the total is the equivalent of only about 32 employees.²⁰ If we make a rough estimate and assume that the salary, fringe benefits, travel expenditures, and other costs of each of these 32 employees amount to an average of \$150,000, then DOL is spending \$4.8 million in fiscal year 2005 in its efforts to prevent illegal child labor in the United States.²¹ This \$4.8 million may sound like a great deal of money, but is less than seven percent of what DOL spent in fiscal year 2005 to combat child labor overseas.²²

As important as it is to fight child labor overseas, DOL needs to increase the resources it devotes to fighting child labor at home. DOL’s record in the United States is poor, not only because it is not allocating enough time and money to the task, but also because it has not wisely used the minimal resources that it has. The CLC’s June 2005 report sets forth the steps that DOL needs to take, and the member organizations of the CLC urge DOL to follow these steps, for the benefit of working children in the United States who are exposed to safety and health hazards in their jobs.

²⁰ In fiscal year 2005, DOL devoted 54,848 hours to child labor investigations, compliance assistance, and other activities. Assuming an average of 1,700 per year worked by a full-time employee (not counting vacation time, holidays, and absences due to medical appointments and illness), this is the equivalent of slightly more than 32 full-time employees.

²¹ \$150,000 x 32 full time employees.

²² In fiscal year 2005 DOL awarded \$69.7 million to combat child labor in Africa, Asia, Latin America and the Caribbean, and the Middle East. *Department of Labor’s 2005 Findings on the Worst Forms of Child Labor* (Washington, D.C., 2006), p. 9. This report is available on DOL’s Web site, www.dol.gov.