

HARVESTING CHANGE: COMBATING CHILD LABOR IN TOBACCO FARMING AMIDST EVOLVING LABOR POLICIES

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ABSTRACT

Child labor in agricultural industries, particularly in tobacco farming, remains a significant issue in the United States, where children as young as 12 years old are legally permitted to work under hazardous conditions. Despite protections under the Fair Labor Standards Act, agricultural exemptions allow child laborers to engage in work considered dangerous at a younger age than other industries allow. This Note explores the historical context of child labor in agriculture, highlighting the dire working conditions of child tobacco farm laborers, such as exposure to harmful pesticides and chemicals, and the physical and long-term health risks they face. The discussion delves into legislative efforts, including the Children Don't Belong on Tobacco Farms Act, aimed at redefining "oppressive child labor" and extending protections to children working in tobacco production. Through interviews and a review of current policy, this Note examines shortcomings in legal frameworks, societal attitudes toward child labor in agriculture, and the potential impact of proposed reforms to safeguard the health and rights of child workers in the tobacco industry.

I. INTRODUCTION

"Child labor and poverty are inevitably bound together, and if you continue to use the labor of children as the treatment for the social disease of poverty, you will have both poverty and child labor to the end of time."¹ Over the last century, the United States has extended legal protections to protect workers of all ages.² However, substantial inconsistencies continue in the twenty-first century concerning children's participation in agricultural labor. Children working in agriculture, specifically tobacco farms, endure working conditions similar to the unregulated child labor standards of the nineteenth century.³ During the nineteenth century, child welfare organizations showed a particular interest in so-called idle children, and by 1870, the census uncovered the rising concern of the increasing number of child laborers.⁴ This problem became especially obvious in 1874 when a tragic incident occurred in a granite mill in Massachusetts, resulting in the death

1. *Powerful Quotes About Poverty*, COMPASSION INT'L (Sept. 25, 2024), <https://www.compassion.com/poverty/famous-quotes-about-poverty.htm> [<https://perma.cc/LM5T-EXGS>].

2. Michael Schuman, *History of Child Labor in the United States—Part 2: The Reform Movement*, MONTHLY LAB. REV., U.S. BUREAU OF LAB. STAT. (Jan. 2017), <https://www.bls.gov/opub/mlr/2017/article/history-of-child-labor-in-the-united-states-part-2-the-reform-movement.htm> [<https://perma.cc/SX6J-3X36>].

3. MARGARET WURTH & JANE BUCHANAN, HUM. RTS. WATCH, TOBACCO'S HIDDEN CHILDREN 102 (2014), <https://humantraffickinghotline.org/sites/default/files/Tobaccos%20Hidden%20Children%20-%20HRW.pdf> [<https://perma.cc/T7ZS-XYHM>].

4. Schuman, *supra* note 2.

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of at least 20 young girls, some as young as five years old, due to hazardous working conditions.⁵

An estimated 1.3 million children under the age of 14 are working on tobacco fields.⁶ Tobacco production is a dangerous undertaking, and this risk is heightened for children.⁷ Children are especially vulnerable to the dangers posed by tobacco farming because of their physical stage of development.⁸ Furthermore, children working on tobacco farms are subjected to various hazardous exposures such as harmful pesticides and chemicals, long hours, physical danger, and immediate health threats such as tobacco poisoning.⁹ Child laborers also face long-term health risks like cancer, neurological damage, reproductive health issues, and mood disorders.¹⁰ Despite these tremendous health risks, there are still thousands of children forced to work in these fields in the United States, and they do not enjoy the same legal protections afforded to children working in other industries, illustrating a pristine example of “agricultural exceptionalism.”¹¹

The Fair Labor Standards Act (FLSA) enacted in 1938 marked the first instance of a federal law that established broad prohibitions on child labor.¹² Under the FLSA, employers are prohibited from hiring children in a manner that constitutes “oppressive child labor” within the domains of commerce, “the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.”¹³ Oppressive child labor is defined as employment where children fail to meet the minimum age requirements as laid out by the FLSA.¹⁴

However, the FLSA offers distinct definitions of oppressive child labor depending on whether the occupation falls under agricultural or non-agricultural

5. *Id.*

6. 100 MILLION, CHILD LABOR IN TOBACCO (2020), <https://satyarathi-us.org/wp-content/uploads/2020/06/Child-Labor-in-US-Tobacco-Facts-and-Action.pdf> [https://perma.cc/8NYC-3J3Z].

7. Athena K. Ramos, *Child Labor in Global Tobacco Production: A Human Rights Approach to an Enduring Dilemma*, HEALTH & HUM. RTS. J., Dec. 2018, at 235, 236.

8. *Id.* at 237.

9. *Id.*

10. *Id.* at 238.

11. *Id.* (detailing how agricultural exceptionalism refers to the unequal protection of labor laws to children working in agriculture compared to other industries).

12. See 29 U.S.C. § 212.

13. *Id.* § 212(c).

14. *Id.* § 203(l).

work.¹⁵ Under the FLSA exemptions, child laborers as young as 12 years old may legally work in agriculture with no limitations on the hours they work.¹⁶ Under these agricultural exemptions of the FLSA, child laborers employed on farms are allowed to carry out tasks considered “particularly hazardous” or harmful to their health at younger ages than their counterparts working in non-agricultural industries.¹⁷ Specifically, children working in agriculture can participate in these dangerous activities and perform hazardous tasks at the age of 16, whereas children working in other industries are required to be 18 years old before undertaking comparable hazardous work.¹⁸ While these policy protections are important to ensure the safety of employed children, the exemptions under the FLSA leave many children unprotected throughout the United States, such as the children working on tobacco farms.¹⁹

Part II of this Note describes the health risks associated with tobacco production, with a focus on interviews of child laborers working in tobacco fields in various regions of the United States. Part III offers a historical overview of the agricultural regulations under the FLSA and explores factors that have hindered the development of legislation designed to safeguard child agricultural workers. Part IV discusses current legislation, specifically the Children Don’t Belong on Tobacco Farms Act, which aims to redefine oppressive child labor to include those under 18 years old with direct involvement in tobacco farming. It also examines reactions to current legislative attempts, modern attitudes toward child labor policy and industry practices, the potential impact of proposed legislation, and further provides recommendations to relevant stakeholders in the tobacco industry.

II. DANGERS TO CHILD TOBACCO WORKERS

Beginning in 2013, the Human Rights Watch (HRW) conducted an extensive research study regarding child labor on tobacco farms, shedding light on harsh details that were experienced by a substantial number of child laborers.²⁰ The majority of children interviewed by HRW were of Hispanic ethnicity with undocumented immigrant parents.²¹ Furthermore, all of the children who

15. *Id.* § 213(c)(1).

16. *Id.*; MARGARET WURTH, HUM. RTS. WATCH, TEENS OF THE TOBACCO FIELDS 50 (2015), https://www.hrw.org/sites/default/files/report_pdf/us1215tob_4up.pdf [<https://perma.cc/X88A-5C8D>].

17. Lisa Iannacci-Manasia, *Unprotected Youth Workers in US Agriculture*, FRONTIERS IN PUB. HEALTH, May 30, 2023, at 1, 1.

18. *Id.*

19. TEENS OF THE TOBACCO FIELDS, *supra* note 16, at 50–51.

20. *See id.* at 21.

21. *Id.* at 23.

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participated in this interview were hired as laborers—none of them worked on family farms.²²

Elena G., a 16-year-old girl living “in a mobile home in eastern North Carolina with her mother, three sisters, two brothers, and nephew,” was interviewed by HRW.²³ At the age of 12, she began to spend her summer vacations laboring on tobacco farms in nearby counties.²⁴ HRW first interviewed Elena in May of 2013, when she was close to 14 years old and about to begin working her second summer in tobacco farming.²⁵ A later interview in 2015 revealed she had completed her first two years of high school.²⁶ Yet her circumstances remained the same, as she continued to labor in the tobacco fields during the summer months.²⁷ Elena shared, “I don’t feel any different in the fields than when I was 12’ . . . ‘I [still] get headaches and . . . my stomach hurts. And like I feel nauseous . . . I just feel like my stomach is like rumbling around. I feel like I’m gonna throw up.’”²⁸ While these symptoms could be consistent with various illnesses, they notably align with acute nicotine poisoning, an occupation-related health risk specific to tobacco farming, resulting from the absorption of nicotine through the skin during contact with tobacco plants.²⁹ The story of Elena G. is similar to many other children working on tobacco farms throughout the United States.³⁰

A. Why Children Work on Tobacco Farms

The primary driving factor behind children’s employment on tobacco farms is the financial necessity of their families.³¹ The COVID-19 pandemic’s prolonged financial consequences, predominantly stemming from inflation, have disproportionately affected unaccompanied migrant children.³² These circumstances have limited their options for earning income, dictating when and where they can do so.³³ Since the pandemic, it is suggested that the number of

22. *Id.*

23. *Id.* at 4.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 7.

30. *Id.*

31. Kaitlyn Radde, *12-Year-Olds Can’t Buy Cigarettes—But They Can Work in Tobacco Fields*, NAT’L PUB. RADIO (Apr. 17, 2023, 7:00 AM), <https://www.npr.org/2023/04/17/1168824035/child-labor-tobacco-legal-dangerous> [<https://perma.cc/M8MM-CWPD>].

32. *Id.*

33. *Id.*

children working in tobacco fields has increased.³⁴ The increase in children working in these tobacco fields is attributed to two key factors: the disruption of in-person school during the pandemic, and the exclusion of individuals without legal immigration status from pandemic relief assistance available to citizens.³⁵

Some of the money children earn on these farms goes to their parents to help with necessities such as food, gas, and school supplies.³⁶ Furthermore, single-parent households face an increased likelihood of having to rely on their children to labor in these fields.³⁷ Other children have expressed that their limited English language skills or work authorization status were the reasons they chose agricultural work as opposed to other industries.³⁸ The reasons children work on tobacco farms stem from financial necessity and affects vulnerable migrant families the harshest.³⁹ Simply pulling the children from the fields will not solve these complex issues many families face.⁴⁰ These issues call for meaningful solutions such as reforming the nation's immigration system, providing farmworkers with higher wages, and establishing summer programs for children.⁴¹ Such measures would mitigate the necessity for parents to involve their children in tobacco farming, ultimately alleviating this dilemma faced by vulnerable families.

B. Hiring Procedures

Hiring procedures were also discussed within the study conducted by HRW.⁴² Several of the interviewed children recounted their experiences with age-related questions during the hiring process.⁴³ For example, Briana G., a 16-year-old laborer, stated, "This year they have [asked my age] because now there's inspection. They asked if I was [16]. I really don't know [why] because I haven't seen them inspect."⁴⁴ However, some of the children interviewed had different recounts of age-related questions during the hiring process.⁴⁵ Danielle R. revealed, "When I got hired, nobody asked my age. They didn't care. They just wanted

34. *Id.*

35. *Id.*

36. TEENS OF THE TOBACCO FIELDS, *supra* note 16, at 23.

37. *See id.*

38. *Id.* at 24.

39. *See id.* at 23.

40. Radde, *supra* note 31.

41. *Id.*

42. TEENS OF THE TOBACCO FIELDS, *supra* note 16, at 24.

43. *Id.*

44. *Id.*

45. *Id.*

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people to work.”⁴⁶ These varied testimonies show how different tobacco farms handle age-related questions when employing child laborers.

Child workers on tobacco farms are regularly hired by contractors, therefore, growers may not be aware of who is working in their fields.⁴⁷ There is increasing concern that growers may be informing tobacco companies they do not hire children to work their fields, but the growers themselves may not be aware contractors have brought in child laborers.⁴⁸ In 2014, certain major tobacco companies and growers announced they voluntarily enacted policies that prohibited their contract growers from hiring child laborers under the age of 16 and forbade children under the age of 18 from doing hazardous work.⁴⁹ However, with the hiring process revealing inconsistent accounts of who is being hired on tobacco farms, there remains a lack of knowledge of how many children are working on these farms.⁵⁰

C. Tobacco Production Procedures

Children working on tobacco farms are involved in every stage of tobacco production, which places them at significant risk for health issues and injuries.⁵¹ The life of a tobacco plant begins with a seed planted in a specially designed seedbed or greenhouse.⁵² After roughly two months, the seed will have grown into a plant between 15 and 20 centimeters high, when it is transitioned into the field.⁵³ Next, tobacco is harvested after two to three months of growing in the fields, either leaf by leaf or by the whole plant.⁵⁴ The final stage of production is curing.⁵⁵ The curing method is dependent on the type of tobacco being grown.⁵⁶ Some types of

46. *Id.* at 25.

47. Radde, *supra* note 31.

48. *Id.*

49. *Id.* (noting Reynolds and Altria, two major tobacco companies in the United States, adopted policies regarding child labor that exceeded federal regulations).

50. *See id.*

51. Leigh E. Colihan, *Child's Play: The Case Against the Department of Labor for Its Failure to Protect Children Working on America's Tobacco Farms*, 64 AM. U. L. REV. 645, 649 (2015).

52. *Tobacco Farming*, PHILIP MORRIS INT'L (Aug. 24, 2024, 12:39 PM), <https://www.pmi.com/tobacco-economics/tobacco-farming-and-curing> [<https://perma.cc/N2E5-BYTX>].

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

tobacco require more labor during the curing stage because the curing process must be done by hand, rather than a machine.⁵⁷

Children interviewed by HRW reported being involved in the seed planting stage.⁵⁸ Children also reported other duties such as weeding, uprooting, and repositioning plants, “topping,” and removing “suckers.”⁵⁹ Topping refers to the process of removing large flowers that grow from the top of the tobacco plants.⁶⁰ The removal of suckers is necessary in tobacco production because these leaves reduce the yield and quality of tobacco.⁶¹ While the processes mentioned above are essential to maintain tobacco quality and yield, it is important to recognize that children’s participation in these processes creates significant health-related risks.

D. Working Conditions and OSHA Standards

Child tobacco workers lack significant protection from several federal occupational safety and health regulations.⁶² The Occupational Safety and Health Administration (OSHA), within the Department of Labor (DOL), is responsible for establishing and enforcing standards aimed at ensuring “safe and healthy working conditions for all workers.”⁶³ While federal safety and health regulations encompass “general industry standards,” most of these standards do not extend to agricultural workers.⁶⁴ Instead, specific “agriculture standards” are in place, such as the Field Sanitation Standard, which mandates agricultural employers provide sufficient drinking water, hand-washing facilities, and toilets.⁶⁵

Before assigning tasks involving tobacco leaves, OSHA requires that employers provide tobacco workers with comprehensive training regarding nicotine hazards, prevention strategies for Green Tobacco Sickness, and the proper use of personal protective equipment.⁶⁶ Also, considering “[n]icotine poisoning, heat-related illnesses and pesticide poisoning share similar symptoms,” employers

57. Colihan, *supra* note 51, at 650.

58. TOBACCO’S HIDDEN CHILDREN, *supra* note 3, at 7.

59. *Id.*

60. *Id.* at 28.

61. *Id.*

62. TEENS OF THE TOBACCO FIELDS, *supra* note 16, at 50–51.

63. TOBACCO’S HIDDEN CHILDREN, *supra* note 3, at 104.

64. *Id.*

65. *Id.*

66. *Green Tobacco Sickness*, OCCUPATIONAL SAFETY & HEALTH ADMIN., U.S. DEP’T OF LAB. (Aug. 25, 2024, 9:22 AM), <https://www.osha.gov/green-tobacco-sickness> [<https://perma.cc/TG65-8JXB>].

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should inform workers about recommended practices and pertinent information.⁶⁷ Furthermore, workers should be encouraged to share any information regarding symptoms with healthcare providers to avoid misdiagnosis.⁶⁸

OSHA advises employees working with tobacco plants to wear gloves, long sleeve shirts and pants, and water-resistant clothes to reduce the risk of nicotine exposure from tobacco leaves.⁶⁹ To preserve the protective qualities of clothing, employers must instruct employees on how to properly clean and care for it.⁷⁰ Workers in temporary labor camps are required to have access to laundry facilities.⁷¹ Gloves and long sleeve clothing prevent nicotine absorption through the skin, but become ineffective when wet.⁷² It is the responsibility of employers to guarantee that employee-owned apparel stays dry and to offer opportunities for drying off during the workday.⁷³

Rain suits and other water-resistant clothing prevent dew or rain containing nicotine from coming into contact with the skin and clothing.⁷⁴ Damaged water-resistant clothing should not be worn, and employers must offer additional breaks for water, rest, and shade when working in extreme heat with such attire.⁷⁵ It is advised that employees wash their hands with soap and water right away after working the fields to minimize their exposure to nicotine, and employers are required by law to provide regulation-compliant shower and handwashing facilities.⁷⁶

The HRW interviews revealed harsh working conditions for children employed on tobacco farms and harsh nonadherence to OSHA standards.⁷⁷ The majority of children worked 11 to 12 hours per day in the tobacco fields.⁷⁸ Certain children worked as many as six days a week while others worked fewer.⁷⁹ Regardless, virtually all the children interviewed reported fatigue and exhaustion

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. See TEENS OF THE TOBACCO FIELDS, *supra* note 16, at 35.

78. *Id.* at 24.

79. *Id.*

after working in the tobacco fields.⁸⁰ Furthermore, children noted they did not have consistent access to toilets and sufficient protective equipment, and had never received workplace protections, such as health education or safety training regarding the dangers of working on tobacco farms.⁸¹ Children also reported that their employers failed to provide them with gloves and water-resistant clothing.⁸² Only one child interviewed by HRW had access to suitable handwashing facilities.⁸³ Direct exposure to tobacco plants and pesticides without suitable protection or hygienic facilities poses considerable risks to the health and well-being of children working in these fields.⁸⁴ Moreover, failure to properly educate child laborers, or conduct health and safety training, puts them at a higher risk of injury and illness related to tobacco production.⁸⁵

E. Health Risks

Children face substantial health risks while working on tobacco farms due to exposure to nicotine, pesticides, and extreme heat.⁸⁶ When children directly handle tobacco plants, they are at risk for developing Green Tobacco Sickness, which is also referred to as nicotine poisoning.⁸⁷ The risk of nicotine poisoning is heightened when their attire becomes saturated from wet tobacco, either made wet from rain, morning dew, or perspiration.⁸⁸ Public health research has shown that non-smoking tobacco workers have comparable nicotine levels in their systems to smokers in the general populous.⁸⁹ The most common symptoms children working on tobacco farms experience due to acute nicotine poisoning are nausea, vomiting, headaches, and dizziness.⁹⁰ Some children also reported insomnia and loss of appetite.⁹¹ Normally, the poisoning lasts anywhere between a few hours to a few days.⁹²

Although acute nicotine poisoning is rarely life-threatening, there have been reports of severe cases that can lead to dehydration and require emergency medical

80. *Id.*

81. *Id.* at 34–35.

82. *Id.* at 35.

83. *Id.*

84. *Id.* at 37.

85. *See id.* at 35.

86. *Id.* at 37.

87. *Green Tobacco Sickness, supra* note 66.

88. *Id.*

89. TOBACCO'S HIDDEN CHILDREN, *supra* note 3, at 7.

90. *Id.* at 3.

91. *Id.*

92. *Id.* at 40.

care.⁹³ Children are especially vulnerable to nicotine poisoning because they are smaller and have lower nicotine tolerance levels than adults.⁹⁴ Although the long-term consequences of nicotine absorption through the skin are not well-documented, existing research on “smoking suggests that nicotine exposure during adolescence may have lasting consequences on brain development.”⁹⁵ The prefrontal cortex, responsible for executive function and attention, continues developing into the early twenties and is particularly sensitive to stimulants like nicotine.⁹⁶ Such exposure during adolescence has been associated with mood disorders and persistent difficulties in memory, attention, impulse control, and cognitive function in adulthood.⁹⁷

Tobacco farms in the United States rely on toxic pesticides for optimal growth of leaves.⁹⁸ The most commonly used pesticides during tobacco production include neurotoxins like organophosphates and carbamates, which disrupt nerve impulses controlling bodily movements.⁹⁹ The accumulation of pesticides enters the body through inhalation, ingestion, or the skin.¹⁰⁰ Children who work on tobacco farms have extensive contact with tobacco leaves which may result in greater exposure to pesticides.¹⁰¹ Pesticide exposure has both short-term and long-term effects.¹⁰² Short-term symptoms can include nausea, dizziness, vomiting, headaches, abdominal pain, and skin and eye problems.¹⁰³ More serious health effects from large doses of pesticides include miscarriage, birth defects, loss of consciousness, coma, and even death.¹⁰⁴ Children are especially susceptible to the adverse effects of toxic pesticide exposure because their brains and bodies are underdeveloped.¹⁰⁵

Tobacco production in the United States is mostly concentrated in southeastern states such as North Carolina, Kentucky, Tennessee, and Virginia,

93. *Id.*

94. *Id.*

95. TEENS OF THE TOBACCO FIELDS, *supra* note 16, at 38.

96. *Id.*

97. *Id.*

98. *Id.* at 39.

99. *Id.*

100. *Id.*

101. *Id.*

102. ZAMA COURSEN-NEFF, FIELDS OF PERIL: CHILD LABOR IN US AGRICULTURE 49 (2010), https://www.hrw.org/sites/default/files/reports/crd0510webwcover_1.pdf [<https://perma.cc/8ZGB-RJ4Z>].

103. *Id.*

104. *Id.*

105. *Id.*

which tend to have high temperatures with dense humidity.¹⁰⁶ Prolonged exposure to extremely hot and humid climates poses a danger for children working on tobacco farms.¹⁰⁷ Children are at a higher risk for heat stroke and dehydration.¹⁰⁸ There are several important physiological differences between children and adults related to the risk of heat-related illness (HRI).¹⁰⁹ Children’s “body surface area-to-mass ratio” is higher.¹¹⁰ The levels of radiation that children receive from the sun are distributed to a smaller amount of tissue, leading to an elevation in core body temperature and an increased risk of HRI.¹¹¹ Also, younger children generally produce less sweat than older adolescents because of smaller sweat glands and a relative insensitivity to heat.¹¹² Therefore, this “makes children’s bodies less efficient at cooling through evaporative heat loss.”¹¹³ These heat-related health risks are heightened if children do not drink enough water and if they do not wear protective clothing to prevent sunburn.¹¹⁴ In a recent study focusing on HRI among child agricultural laborers, a significant number of child participants disclosed experiencing at least one HRI during their work.¹¹⁵ Furthermore, the majority of farmworkers are paid “piece rate” wages, which promotes increased production, a faster work pace, and discourages taking breaks, increasing the likelihood of HRI amongst child tobacco workers.¹¹⁶

The health risks associated with tobacco production are well documented and pose a greater danger to children rather than adults, calling for increased regulatory protections to ensure their safety.¹¹⁷ Although the DOL is aware of these hazardous working conditions on tobacco farms, it has failed to take measures to properly protect child laborers.¹¹⁸

106. M. Shahbandeh, *Leading Tobacco Producing U.S. States from 2021 to 2023*, STATISTA (Jan. 24, 2024), <https://www.statista.com/statistics/192022/top-10-tobacco-producing-us-states/> [https://perma.cc/5W7L-PPDH].

107. TOBACCO’S HIDDEN CHILDREN, *supra* note 3, at 52.

108. *Id.* at 53.

109. Taylor J. Arnold et al., *Heat-Related Illness Among Latinx Child Farmworkers in North Carolina: A Mixed-Methods Study*, 30 NEW SOLUTIONS: J. ENV’T & OCCUPATIONAL HEALTH POL’Y 111, 113 (2020).

110. *Id.*

111. *Id.* at 113–14.

112. *Id.*

113. *Id.*

114. TOBACCO’S HIDDEN CHILDREN, *supra* note 3, at 53.

115. Arnold et al., *supra* note 109, at 121.

116. *Id.* at 113.

117. Colihan, *supra* note 51, at 653.

118. *Id.* at 673.

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III. HISTORICAL OVERVIEW OF CHILD LABOR IN AGRICULTURE UNDER THE FAIR LABOR STANDARDS ACT (FLSA)

Prior to the twentieth century, child labor was the reflection of the distinct socioeconomic categorization of working-class families in which the general assumption was that children worked regardless of their age.¹¹⁹ In 1904, the National Child Labor Committee (NCLC) was created and quickly became the central force advocating for the end of child labor exploitation.¹²⁰ Efforts to establish child labor regulations in the United States started in the late nineteenth century, primarily at the state level.¹²¹ By the early 1900s, child labor issues gained national attention leading to congressional hearings and comprehensive research.¹²² There were several legislative attempts aimed at addressing abusive child labor challenges at the federal level.¹²³ However, they subsequently failed, partly because child advocates had different approaches regarding the means to end oppressive child labor.¹²⁴

There have been various alternative rationales offered as to why these early attempts to regulate child labor failed.¹²⁵ One of the rationales is that farm work gave children an opportunity to learn the meaning of hard work in a family-centered environment.¹²⁶ Agricultural work was seen as a rite of passage in some areas of the United States and this well-accepted attitude towards child labor in agriculture masked the dangers associated with it.¹²⁷ This, in turn, placed limitations on legislative initiatives aimed at protecting child agricultural workers in the 1930s.¹²⁸

A. Introduction of FLSA

Following an intense debate, the FLSA was enacted as federal law in 1938.¹²⁹ Generally, the FLSA extended protections to children by outlining the conditions

119. CONG. RSCH. SERV., RL31501, CHILD LABOR IN AMERICA: HISTORY, POLICY, AND LEGISLATIVE ISSUES 1 (2013) [hereinafter CHILD LABOR IN AMERICA].

120. *Id.* at 2.

121. *Id.* at 1.

122. *Id.*

123. *Id.* at 6.

124. *Id.* at 22–23.

125. Colihan, *supra* note 51, at 653.

126. *Id.* at 653–54.

127. *Id.*

128. *Id.* at 654.

129. CHILD LABOR IN AMERICA, *supra* note 119, at 6.

of their employment and prohibiting certain types of employment altogether.¹³⁰ The overarching structure of the FLSA has remained mostly unchanged over the last several decades.¹³¹ However, Congress has amended specific provisions of the FLSA and the DOL has adopted administration changes through the rulemaking process.¹³²

B. Disparate Protections Under the FLSA

The adoption of the FLSA in 1938 marked the establishment of a novel federal framework for regulating child labor.¹³³ Understanding the implications of this legal framework is essential when considering how the FLSA provisions impact the working conditions of child agricultural laborers.¹³⁴ The FLSA establishes broad policies while also outlining specific details on how the legislation is applied.¹³⁵ Discretion in application can be carried out through the statute itself or the enactment of regulations.¹³⁶ This discretion has left child agricultural workers highly unprotected by the FLSA.¹³⁷

C. Oppressive Labor and Hazardous Occupations

Oppressive child labor is forbidden under the FLSA “in commerce or in the production of goods for commerce.”¹³⁸ Under the FLSA, the definitions of oppressive child labor differ according to whether the occupation is considered agricultural or non-agricultural.¹³⁹ This deviation in definition results in weakened protections for child agricultural workers.¹⁴⁰ For example, while Congress has established age restrictions of approximately 16 years old for non-agricultural employment, children as young as 12 are allowed to engage in agriculture-based work.¹⁴¹ Moreover, children 16 and older are permitted to work “particularly hazardous” occupations.¹⁴² Despite the FLSA’s ban on oppressive child labor,

130. *Id.* at 7.

131. *Id.*

132. *Id.*

133. *See* Arnold et al., *supra* note 109, at 112–13.

134. *See* Colihan, *supra* note 51, at 645.

135. CHILD LABOR IN AMERICA, *supra* note 119, at 7.

136. *Id.*

137. *See id.*

138. *Id.* Oppressive child labor can be defined as the employment of a child who does not meet the minimum age required by the FLSA. 29 U.S.C. § 203(l).

139. CHILD LABOR IN AMERICA, *supra* note 119, at 8.

140. *See id.*

141. *Id.*

142. *Id.*

notable disparities persist in the legal safeguards provided for child agricultural work within the existing legislative framework.¹⁴³

The Secretary of Labor (SOL) possesses a crucial tool to address the disparate regulations concerning child agricultural workers—the power to define hazardous occupations.¹⁴⁴ The SOL was granted the authority to issue Agricultural Hazardous Orders in a 1966 amendment by Congress.¹⁴⁵ Congress explicitly chose not to define these hazardous occupations because it believed providing the SOL with the flexibility to determine what was considered hazardous employment was more practical.¹⁴⁶ The classification of hazardous occupations reveals a significant disparity between agricultural child laborers and their non-agricultural counterparts.¹⁴⁷ For non-agricultural jobs, the minimum age requirement to engage in hazardous work is 18 years old, compared to agricultural jobs where the minimum age requirement is 16.¹⁴⁸ Furthermore, parental exceptions exist that permit children of any age to engage in hazardous work if the work is performed on a farm owned by the child’s parent.¹⁴⁹ Despite extensive documentation of the risks of hazardous work in agriculture, employment protections for child laborers continue to show obvious deficiencies.¹⁵⁰

D. Influential Roles of Farm Lobbyists in Shaping FLSA Policy

Influential rural representatives and lobbyists pose a substantial barrier to legislation aimed at protecting child agricultural workers.¹⁵¹ The majority of challenges to labor safety legislation came from agricultural lobbyists who had their eye on cheap farm labor and their hand in avoiding increased costs that might stem from establishing labor standards to protect minority agricultural workers.¹⁵² These powerful groups contended that agriculture and farming were distinct from other industries because “farms relied on hiring seasonal workers at low costs.”¹⁵³ In particular, southern representatives possessed crucial votes, known as lynchpin votes, and employed these votes to obstruct the perceived “threat to the future

143. *Id.*

144. 29 U.S.C. § 203(l).

145. Fair Labor Standards Amendments of 1966, Pub. L. No. 89-601, § 203(d), 80 Stat. 830, 834; Colihan, *supra* note 51, at 658.

146. Colihan, *supra* note 51, at 658.

147. *Id.* at 659.

148. *Id.*

149. *Id.*

150. *Id.* at 660.

151. *Id.* at 654.

152. *Id.* at 654–55.

153. *Id.* at 655.

success of the agriculture industry.”¹⁵⁴ This perceived threat consisted of extending protections to Black agricultural workers, forcing southern farm owners to increase wages, and ensuring occupational safety for minority workers.¹⁵⁵ Notwithstanding numerous challenges, the FLSA was successfully enacted.¹⁵⁶ However, due to the extensive concessions made during the negotiations preceding its passage, the child labor provisions of the FLSA were notably diminished.¹⁵⁷

E. Congress and the Department of Labor Resist Proposed Stricter Standards Due to Political Pressure

Various members of Congress have introduced legislation aimed at narrowing the disparities in protection for child tobacco workers.¹⁵⁸ The DOL proposed regulations to amend the list of hazardous occupations in agriculture prohibited for children under the age of 16 in 2011.¹⁵⁹ These regulations would have prohibited children under the age of 16 from working in any stage of tobacco production, except on family farms.¹⁶⁰ However, in 2012, the DOL withdrew the legislation due to immense opposition from agriculture interests.¹⁶¹ These interests included a total of 153 members of the House of Representatives, 42 United States Senators, small family-owned farms, and agriculture education instructors.¹⁶² The SOL claimed the regulation was withdrawn because the DOL planned to take a non-regulatory approach by working with various farming organizations, such as the National FFA Organization and the American Farm Bureau, to develop educational programs that address hazardous agricultural work conditions.¹⁶³ Since the withdrawal, the DOL has not reintroduced the regulation or pursued new pieces of legislation aimed at protecting child tobacco workers.¹⁶⁴

In 2014, HRW filed formal complaints with OSHA regarding the implementation and enforcement of the Field Sanitation Standard (FSS).¹⁶⁵ The

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. TOBACCO’S HIDDEN CHILDREN, *supra* note 3, at 18.

159. *Id.* at 102.

160. *Id.* at 102–03.

161. *Id.* at 103.

162. Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties, 77 Fed. Reg. 31549, 31550 (May 29, 2012) (to be codified at 29 C.F.R. pts. 570, 579).

163. *Id.* at 31550–51.

164. TEENS OF THE TOBACCO FIELDS, *supra* note 16, at 51.

165. *Id.*

FSS requires farmworkers to be supplied with adequate “drinking water and accessible toilet and handwashing facilities.”¹⁶⁶ Furthermore, in 2015, EPA introduced significant changes to the Agricultural Worker Protection Standard, which was aimed at providing safeguards to farm workers who handle pesticides.¹⁶⁷ The revision bans child farm workers under 18 from handling pesticides, implements annual safety training, improves protective equipment, and improves record keeping.¹⁶⁸ This marks the first regulatory action to protect 16 and 17-year-old child farmworkers from work classified as hazardous.¹⁶⁹

IV. CURRENT LEGISLATION AND RECOMMENDATIONS

In 2023, the United States saw a stark rise in child labor.¹⁷⁰ The rise in child labor has also come with a rise in violations of child labor laws—a 37% increase in violations since 2022 and a 283% increase since 2015.¹⁷¹ This spike in child labor is driven by a troubling combination of employers seeking to fill positions at minimal expense, a significant influx of unaccompanied minors entering the country, a notable prevalence of human trafficking, and an increasing number of state legislatures relaxing child labor laws to accommodate industry demands, occasionally resisting federal authority.¹⁷²

Between 2021 and 2023, at least 14 states, including Iowa, have introduced or considered laws that weaken child labor protections.¹⁷³ The Iowa law permits children as young as 14 to work in industrial laundries.¹⁷⁴ Moreover, with state agency approval, 16-year-olds can engage in hazardous occupations like roofing, excavation, and the operation of power-driven machinery.¹⁷⁵ These changes

166. *Id.*

167. *Id.* at 52.

168. *Id.*

169. *Id.*

170. William Finnegan, *Child Labor Is on the Rise*, THE NEW YORKER (June 4, 2023), <https://www.newyorker.com/magazine/2023/06/12/child-labor-is-on-the-rise> [<https://perma.cc/BQ3Y-YVUB>].

171. *Id.*

172. *Id.*

173. Jennifer Sherer & Nina Mast, *Iowa Governor Signs One of the Most Dangerous Rollbacks of Child Labor Laws in the Country*, ECON. POL’Y INST. (June 23, 2023), <https://www.epi.org/blog/iowa-governor-signs-one-of-the-most-dangerous-rollbacks-of-child-labor-laws-in-the-country-14-states-have-now-introduced-bills-putting-children-at-risk/> [<https://perma.cc/Y68Z-HW75>].

174. *Id.*

175. *Id.*

contradict federal restrictions on oppressive child labor.¹⁷⁶ Additionally, the law reduces employer liability for any harm befalling a child on the job.¹⁷⁷ Despite certain states moving to weaken child labor policies, there are two main pieces of legislation being introduced in Congress to help address the longstanding problem of child labor in agriculture, one being primarily focused on child tobacco workers.¹⁷⁸

A. Children Don't Belong on Tobacco Farms Act

Since 2015, the Children Don't Belong on Tobacco Farms Act has been repeatedly introduced in the House of Representatives and the Senate, but has failed to progress any further.¹⁷⁹ If passed, this legislation would ban children under 18 years of age from being hired on tobacco farms.¹⁸⁰ More specifically, this bill would amend the FLSA to prohibit the employment of children in tobacco-related agriculture by categorizing this employment as oppressive labor.¹⁸¹ Children would be unable to have any direct contact with tobacco plants or leaves during any stage of cultivation or manufacturing.¹⁸² The driving force behind this bill is to mitigate the known dangers of handling tobacco for child agriculture workers such as Green Tobacco Sickness, pesticide exposure, and HRI.¹⁸³

Children working in agriculture, including on tobacco farms, accounted for “more than half of work-related fatalities.”¹⁸⁴ While children engaged in agricultural labor represent a minor fraction of the total child labor force, investigations revealed that between 2003 and 2016, 52% of work-related deaths

176. *Id.*

177. *Id.*

178. Margaret Wurth, *US Lawmakers Move to Protect Child Farmworkers*, HUM. RTS. WATCH (June 12, 2023, 4:03 AM), <https://www.hrw.org/news/2023/06/12/us-lawmakers-move-protect-child-farmworkers> [<https://perma.cc/5MAC-J5Z5>].

179. Press Release, Dick Durbin U.S. Senator for Ill., Durbin, Blumenthal, Brown, Reed, Feinstein Call on Dep't of Lab. to Regulate Child Lab. on Tobacco Farms (Feb. 8, 2023) [hereinafter Call on Dep't of Lab. to Regulate Child Lab. on Tobacco Farms], <https://www.durbin.senate.gov/newsroom/press-releases/durbin-blumenthal-brown-reed-feinstein-call-on-department-of-labor-to-regulate-child-labor-on-tobacco-farms> [<https://perma.cc/S8DR-389F>].

180. Children Don't Belong on Tobacco Farms Act, H.R. 4020, 118th Cong. (2023).

181. *Id.* § 2(2).

182. *Id.* § 2(1)(B).

183. Call on Dep't of Lab. to Regulate Child Lab. on Tobacco Farms, *supra* note 179; TEENS OF THE TOBACCO FIELDS, *supra* note 16, at 26.

184. CINDY BARNES & STEVE MORRIS, U.S. GOV'T ACCOUNTABILITY OFF., WORKING CHILDREN: FEDERAL INJURY DATA AND COMPLIANCE STRATEGIES COULD BE STRENGTHENED 49–50 (2018), <https://www.gao.gov/assets/gao-19-26.pdf> [<https://perma.cc/VZ3Z-N869>].

involving individuals aged 17 and under occurred within the agriculture sector.¹⁸⁵ Over 30% of these fatalities were attributed to crop agriculture.¹⁸⁶ Senators urged the DOL to enact this bill to protect children from exploitative labor, but also to defend racial justice and equity due to the harms stemming from child tobacco work affecting children of color at a disproportionate rate.¹⁸⁷ However, it is unlikely this piece of federal legislation will pass anytime soon.¹⁸⁸ Latinx child farmworkers tend to settle at the bottom of Congress' priority list.¹⁸⁹

Fortunately, Big Tobacco companies and grower's associations in the United States have adopted voluntary standards to limit child labor on tobacco farms.¹⁹⁰ This Act would formally codify the implied agreement that a tobacco farm is hazardous to children.¹⁹¹ For example, Altria Group and Reynolds American, the two largest tobacco product manufacturing companies, have publicly claimed they would prohibit hiring children under the age of 16 on tobacco farms within their United States supply chains.¹⁹² Alliance One International, one of the world's biggest tobacco leaf suppliers, prohibited hiring children under the age of 16 in the United States.¹⁹³ Large tobacco grower's associations, such as Burley Tobacco and Tobacco Growers of North Carolina, also pledged to hire only children over the age of 16 and that children employed would not perform hazardous tasks.¹⁹⁴ While there is increasing alignment amongst the biggest players in tobacco, child labor policies continue to leave many child farm workers vulnerable to harm.¹⁹⁵

185. *Id.* at 28.

186. *Id.*

187. Call on Dep't of Lab. to Regulate Child Lab. on Tobacco Farms, *supra* note 179.

188. Reid Maki, *It's Time for U.S. Tobacco Companies to Protect All Child Tobacco Workers with a Complete Ban on Children in Tobacco Fields*, THE CHILD LAB. COAL. (Aug. 3, 2020), <https://stopchildlabor.org/its-time-for-u-s-tobacco-companies-to-protect-all-child-tobacco-workers-with-a-complete-ban-on-children-in-tobacco-fields/> [<https://perma.cc/95TH-R5B4>].

189. *Id.*

190. See Press Release, Dick Durbin U.S. Senator for Ill., Durbin, Cicilline Announce Introduction of Bill to Ban Child Lab. on Tobacco Farms (June 15, 2021), <https://www.durbin.senate.gov/newsroom/press-releases/durbin-cicilline-announce-introduction-of-bill-to-ban-child-labor-on-tobacco-farms> [<https://perma.cc/NJD7-SNU4>].

191. *Id.*

192. TEENS OF THE TOBACCO FIELDS, *supra* note 16, at 54.

193. *Id.*

194. *Id.* at 65.

195. *Id.* at 68.

B. CARE Act

Another bill directed at increasing protections for child tobacco workers is the Children’s Act for Responsible Employment and Farm Safety (CARE Act).¹⁹⁶ The CARE Act would amend the FLSA “to apply the same age and hour requirements to children working in agriculture, [including on tobacco farms,] as for children working in other occupations.”¹⁹⁷ Presently, under the FLSA, any agricultural employer has the right to employ children as young as 12 years old with parental consent, permitting the child laborers to work unrestricted hours outside of school.¹⁹⁸ Moreover, on family farms, there is no minimum age for children working outside of school hours with parental approval.¹⁹⁹ In contrast, non-agricultural sectors are restricted from hiring children under the age of 14, and children between 14 and 15 are protected by a maximum number of hours they can work each week.²⁰⁰

The CARE Act aims to close these loopholes in the FLSA, strengthen current regulations, and impose increased penalties on repeat employers who violate child labor laws.²⁰¹ Specifically, the CARE Act would “increase the maximum civil monetary penalties for child labor violations” to \$15,000.²⁰² Additionally, the bill would increase the maximum penalty to \$50,000 and establish a maximum criminal penalty of five years imprisonment for “willful or repeat violations that lead to the death or serious injury of a child worker.”²⁰³ The bill also aims to align labor regulations for pesticide exposure with the EPA’s current standards, which prohibit individuals under 18 from handling pesticides.²⁰⁴ Finally, the CARE Act would mandate “data collection on work-related injuries, illness, and deaths of children under age 18 in agriculture,” as well as require an annual report by the SOL on child labor in the United States.²⁰⁵

196. CARE Act of 2022, H.R. 7345, 117th Cong. (2022).

197. HUM. RTS. WATCH, FACT SHEET: US LEGISLATION TO ADDRESS CHILD LABOR (2024), https://www.hrw.org/sites/default/files/supporting_resources/factsheet_us_legislation_address_childlabor_1.pdf [<https://perma.cc/5QTN-FCU8>].

198. *Id.*

199. *Id.*

200. *Id.*

201. FIRST FOCUS CAMPAIGN FOR CHILD., THE CHILDREN’S ACT FOR RESPONSIBLE EMPLOYMENT (CARE ACT) (2011), <https://campaignforchildren.org/wp-content/uploads/sites/2/2011/06/CAREAct.pdf> [<https://perma.cc/ZH68-8P7X>].

202. FACT SHEET: US LEGISLATION TO ADDRESS CHILD LABOR, *supra* note 197.

203. *Id.*

204. *Id.*

205. *Id.*

The CARE Act serves as an important starting point in protecting the safety of an estimated 400,000 child agricultural workers.²⁰⁶ The majority of children who work in agriculture often struggle to sustain their studies because working in the fields is prioritized over attending class.²⁰⁷ This prioritization stems from economic necessity for families facing extreme poverty.²⁰⁸ Consequently, children working in agriculture have a school dropout rate four times the national average.²⁰⁹ Discriminatory child labor laws continue to deprive children working in agriculture of “fundamental rights by subjecting them to dangerous conditions and long work hours that threaten their health, safety, and academic development.”²¹⁰ The CARE Act would ensure these children remain protected and are provided with equal protection under federal child labor laws.²¹¹

C. Recommendations

The HRW provides a series of full recommendations to better protect child tobacco workers.²¹² HRW recommends that Congress enact various pieces of legislation, including amending the FLSA, to prohibit children under the age of 18 from working directly with tobacco.²¹³ The HRW also recommends that Congress focus on immigration legislation that would reduce the abuse of immigrant workers’ rights, including a program of legislation for immigrant workers who are already in the United States.²¹⁴ HRW has also directed recommendations to the DOL.²¹⁵ HRW suggests the DOL revise the list of “particularly hazardous” agricultural jobs for children, including jobs where children directly handle tobacco.²¹⁶ The HRW also recommended the DOL thoroughly investigate child labor in the context of tobacco farming by conducting surprise inspections during times and locations where children are highly likely to be engaged in work.²¹⁷ This comprehensive list of recommendations collectively addresses the critical need to safeguard the rights and well-being of children working on tobacco farms.²¹⁸

206. FIRST FOCUS CAMPAIGN FOR CHILD., *supra* note 201.

207. *Id.*

208. *See* Schuman, *supra* note 2.

209. FIRST FOCUS CAMPAIGN FOR CHILD., *supra* note 201.

210. *Id.*

211. *Id.*

212. TEENS OF THE TOBACCO FIELDS, *supra* note 16, 70–72.

213. *Id.* at 70.

214. *Id.*

215. *Id.* at 70–71.

216. *Id.* at 70.

217. *Id.*

218. *Id.* at 70–72.

VI. CONCLUSION

The intersection of child labor, immigration, and poverty places child tobacco workers in vulnerable positions. Currently, the federal legal framework leaves immense gaps in protections for child tobacco workers.²¹⁹ The FLSA fails to recognize the hazardous working conditions associated with children working in the tobacco industry, such as putting child workers at risk for injury, illness, and even death.²²⁰ While several states are rolling back strict child labor policies to fill positions at minimal expense, there are pivotal pieces of legislation being introduced to combat the abuses child tobacco workers endure. Amidst these challenges, it is critical to introduce pivotal legislation aimed at combatting the egregious abuses endured by child tobacco workers. These legislative initiatives represent a potential avenue for rectifying systemic injustices and amplifying the voices of marginalized youth laboring within the tobacco industry. In the words of Kofi Annan, “There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace.”²²¹

219. TEENS OF THE TOBACCO FIELDS, *supra* note 16, at 68–69.

220. Colihan, *supra* note 51, at 652.

221. *Children’s Rights*, BETTER WORLD QUOTES (Aug. 25, 2024, 9:53 AM), <https://www.betterworld.net/quotes/children-quotes.htm> [<https://perma.cc/4HG7-8MHU>].