Child Labor Laws--Time to Grow Up

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Note: Child Labor Laws—Time to Grow Up

A number of state legislatures\(^1\) have recently revised their complex and restrictive child labor laws, despite a dearth of critical legal analysis.\(^2\) The primary reasons for these changes have been the rising rates of teenage unemployment and delinquency, which have prompted concern over the effect of child labor laws on youth employment.\(^3\) Further, the rapidly changing social and legal status of young people has created a need to reconsider the purposes and effects of laws that purport to protect children while unavoidably limiting their legal and civil rights.\(^4\) The purposes of this Note are (1) to review the social and economic history of child labor legislation; (2) to describe the economic, social, and legal changes since the enactment of the statutes that affect their ability to achieve their purposes and protect the interests of young people; (3) to survey state child labor laws in the context of current social and economic conditions; (4) to analyze the effect of differential minimum wage laws on teenage unemployment; and (5) to advance a proposal for amending the child labor laws to reflect the actual needs of young people.

I. HISTORICAL PERSPECTIVES

The child labor laws were enacted and amended in response to the social and economic factors influencing the position of children in society and, correspondingly, in the labor market. Near the end of the nineteenth century, the expanding activity of the state, the growth of the doctrine of *parens patriae*,\(^5\) and the eco-


\(^2\) There has been a surprising lack of legal scholarship on child labor laws. For example, the *Index to Legal Periodicals* has listed no articles on the topic for the last 15 years, except for notes on implied actions for damages under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (1970).


\(^5\) The expansion of the doctrine of *parens patriae* during the nineteenth century is described in Panel on Youth of the President's Science Advisory Committee, *Youth Transition to Adulthood* 30-31
nomic changes accompanying the Industrial Revolution set the stage for the enactment of these statutes. For classical economists, the predominant economic concern had been efficiency rather than welfare. It was believed that the optimum allocation of resources, including labor, would be achieved through marketplace response to effective demand. The Social Darwinism of the free market condoned the practice of employing children for long hours in unhealthy atmospheres, and in response, a strong citizens' movement for child labor reform emerged. Groups such as the National Child Labor Committee crusaded for restrictive child labor provisions. In pamphlets such as *Day and Night in a Vegetable Canning Factory, Child Workers in the Tenements, and Physical Effects of Premature Toil*, concerned groups presented to the legislatures and to the public evidence of the abuses and exploitation accompanying child labor. Such social and economic evidence, often including pictures of pitiful young children working in factories, provided the impetus for the shift from a relatively free child labor market to one regulated by the government. The child labor laws were enacted to prevent children from engaging in hazardous occupations to their peril, to prevent children from injuring themselves by reason of their own inexperience and heedlessness, to prevent the maiming of children "whereby they would become burdens upon the public," "to diminish ignorance and immorality," to prevent juvenile delinquency, to prevent the overworking of children during the period of their physical and mental development, and "to prevent competition between weak and underpaid labor and mature men who owe to society the obligations and duties of citizen-

(1974) [hereinafter cited as YOUTH TRANSITION]:
Advances in the law of custody and guardianship, improvements in provision for pauper, delinquent, and illegitimate children, and enactment of compulsory education and rudimentary child labor laws . . . hailed "the total emergence of the child from his former legal oblivion."

7. NATIONAL CHILD LABOR COMMITTEE, COMPILLED PAMPHLETS (1922).
11. Id. at 436, 97 N.W. at 139.
childship."14 By 1906, advocates of child labor laws could rely on consistent judicial rulings that "the Legislature may undoubtedly forbid the employment of children... at any regular occupation if the interests of the children and the general welfare of society will thereby be secured and promoted."15 With the police power of the states thus clarified, the child labor laws were upheld.

The humanitarian objectives that were the seeds of reform, however, were often not enough to overcome the economic pressures of the times. In many states, "[t]he threat of exploiters to remove their plants to states with lower standards of social legislation sounded the death knell to... drive[s] for reform."16 States with restrictive child labor laws had to compete for the benefits of industry with states where child labor produced goods of equal quality for lower cost. This competition between states called for nationwide regulation. In 1916 Congress passed the first federal act regulating child labor,17 but it was promptly declared unconstitutional.18 Two years later a similar act imposing an excise tax on goods manufactured with child labor19 was declared an unconstitutional intrusion upon state power.20 Thus, the competition between states with unequal child labor restrictions continued to reduce the effectiveness of the laws. Not until the depression of the 1930's was there a nationwide interest in the enforcement of child labor laws.21 Children were working while adults were out of work.22 Finally, in 1938, the federal

22. Between the ages of seven and seventeen years, over two million children were gainfully employed in December, 1932, while ten or eleven million adults were in desperate need of work. The makers of homes were penniless while children performed their work for a pitance. . . . Our present state of affairs requires that the child be displaced in the industrial scheme of things. Aside from the attractiveness of the humanitarian ideal of a workaday world without children, our conclusion is that the recent interest in the proposed Child Labor
Fair Labor Standards Act, which included provisions regulating oppressive child labor, was passed.\textsuperscript{23} The Act was upheld by the Supreme Court in \textit{United States v. Darby}.\textsuperscript{24}

During World War II, another shift in economic conditions occurred, and with it, as might be expected, came a shift in child labor regulation. Laborers were desperately needed, and the resulting economic bargaining power enabled them to insist upon improved working conditions.\textsuperscript{25} Hence, many of the extremely dangerous working conditions that had led to the popular outcry against child labor were eliminated. Fairly safe jobs were available for young people, and their labor was needed. Courts adjusted to the changed conditions by narrowly interpreting or even ignoring the child labor laws.\textsuperscript{26} After the war, an increasing number of groups and individuals that once had supported restrictions on child labor expressed doubts about the appropriateness in a modern economy of the restrictions which had been adopted in earlier years.\textsuperscript{27}

\section*{II. CURRENT PERSPECTIVES}

In the half century since the child labor laws were first enacted, the economic, social, and legal circumstances that made the laws necessary have changed to such a degree that the original laws require amendment. The New York Court of Appeals explains:

Amendment springs from a purpose to safeguard for adults the field of gainful employment.

\textit{Id.}

\textsuperscript{23} 29 U.S.C. \S\S 203(1), 212-13 (1970).

\textsuperscript{24} 312 U.S. 100 (1940).


\textsuperscript{26} For example, in Western Union Co. \textit{v. Lenroot}, 323 U.S. 490 (1945), Justice Jackson resorted to what was widely criticized as "logomachy" in order to exempt Western Union from the child labor statutes. \textit{See} Radin, \textit{A Case Study in Statutory Interpretation: Western Union Co. \textit{v. Lenroot}}, 33 \textsc{Calif. L. Rev.} 219, 228 (1945). \textit{See also} Angerstein, \textit{The Child Labor Act and the Workmen's Compensation Act of Illinois}, 20 \textsc{Chi.-Kent L. Rev.} 193 (1942); \textit{Comment, Child Labor Telegram Messenger Service}, 19 \textsc{Temp. L.Q.} 519 (1946). As a result, the "long-run contraction of [the] teenage labor force was temporarily reversed during World War II." Silberman, \textit{supra} note 3, at 52.

\textsuperscript{27} For example, by 1958 the National Child Labor Committee had voted to rename itself the National Committee on Employment of Youth. \textsc{National Committee on Employment of Youth, Annual Report} (1983).
It is quite true that the original child labor statutes were passed at a time when children were often employed for long hours at low wages to the detriment of their health, education, and general upbringing. Circumstances have changed. Children nowadays may be handicapped instead by the lack of opportunity for work experience at an early age. The ends sought by the statute have necessarily shifted.28

Current unemployment statistics indicate that one of the major problems not considered in earlier child labor legislation is the relationship between child labor restrictions and growing teenage unemployment rates. In the years since World War II, the unemployment rate of youths between 16 and 19 years of age has increased from 9.2 percent to 17.3 percent.29 Teenagers, who represent only 8 percent of the labor force, account for 22 percent of the unemployment and about 35 percent of the increase in unemployment since the middle 1950's.30 A total of 1,302,000 teenagers were actively looking for work in 1972.31 While the unemployment rate for teenagers tends to be approximately three times the unemployment rate for adults, the rate is much higher for minority youths and youths living in poverty areas.32 Legislation initially designed to correct child labor abuses has not been responsive to teenage unemployment or to the particularly aggravated conditions of minorities and the poor.

The existing youth unemployment results in the skills and productivity of a million young workers being wasted. Moreover, the frequency of property crimes by juveniles appears to be closely related to youth unemployment rates.33 State legislatures have expressed concern over the problem of juvenile delinquency and seem to agree that it is adversely affected by youth unemployment.34 Thus, the considerations that originally occasioned the enactment of child labor laws have apparently been superseded by concerns over youth unemployment and juvenile delinquency.

30. Silberman, supra note 3, at 51.
32. YOUTH UNEMPLOYMENT, supra note 29, at 56.
The inhibiting provisions of the child labor statutes are chief among the many obstacles, not faced by adults, which confront teenagers searching for work. In a recent government survey of employers, the most frequently cited reasons for decisions not to hire teenagers under 18 were restrictions on employment of teenagers in hazardous occupations. A similar study of state experience with child labor laws and their effect on youth employment indicated that, while statutory restrictions on hazardous employment and hours of work were factors, union restrictions and the cumbersome procedures involved in obtaining work certificates were also major obstacles to the hiring of youths. Research by the Bureau of Labor Statistics, based on extensive surveys of local employment service offices, reveals that "legal restrictions on hours of work, hazardous work, or other working conditions" are the most severe of the difficulties encountered in placing teenagers. Employers' misunderstandings of the complex laws also deter them from hiring young workers. Even those employers who do understand the child labor laws think the restrictions are unrealistic and indicate that they would hire more minors if the laws were changed.

Undoubtedly factors besides child labor restrictions contribute to the high rate of youth unemployment; teenage unemployment is affected by the same general business conditions that affect the adult unemployment rate. Moreover, the problem of youth unemployment is compounded by the growth in the teenage population, the increase in the proportion of teenagers enrolled in schools, the shift toward nonagricultural employment, the tendency to hire experienced or comparatively dependable adults rather than inexperienced and relatively less stable teenagers, the unavailability of insurance to employers hiring minors, and the expanding number of working women competing for the unskilled and part-time jobs suitable for most teenagers.

The child labor laws originally may have been designed to protect children from the abusive employment practices common

35. Youth Unemployment, supra note 29, at 69.
36. Id. at 122.
37. Id. at 79.
38. Id. at 122.
39. Id. at 130.
41. See Youth Unemployment, supra note 29, at 188; Silberman, supra note 3, at 51.
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to the free labor market of the nineteenth and early twentieth centuries, but as economic and employment patterns have shifted, the labor market has been increasingly regulated by state and federal legislation or collective bargaining agreements. Consequently, the abuses which first led to enactment of the child labor statutes are currently controlled, in many cases, by other statutes or contracts regulating job safety, minimum wages, or hours of work, applicable to workers regardless of age. The federal Occupational Safety and Health Act requires that an employer involved in interstate commerce provide "a place of employment . . . free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." In addition, the Act provides for financial assistance to states whose occupational safety standards meet the minimum federal requirements, thereby encouraging states to improve the administration and enforcement of their job safety laws. Consequently, a large number of states have adopted comprehensive statutes patterned after the federal Act or have made substantial conforming changes to their existing laws. Another federal act providing protection for a large proportion of employed teenagers is the federal Minimum Wage and Hours Act. Currently, the minimum wage applicable to most young workers is $2.10 per hour; these wages may not allow extravagance, but they are substantially better than the starvation wages children received before the child labor laws were enacted. The maximum hours provision of the Act, moreover, protects a worker from being employed for more than forty hours per week unless he is paid time-and-a-half. With changes in the climate of public opinion, labor unions also have addressed areas once regulated only by child labor laws. A highly unionized labor force has effectively demanded safer working conditions for all workers. Modern technology makes feasible the attainment of safe working conditions for everyone, and the consensus of workers and legislators is that it is in the best interest of the entire society to demand safe and healthy working conditions for all workers even at the

43. Id. § 654.
44. Id. §§ 667, 672.
48. 29 U.S.C. § 207(a) (1).
expense of the efficiency of a free market.\textsuperscript{49}

The Social Darwinism of the late nineteenth century is no
longer the predominant social and economic philosophy; the once
"free" labor market is now extensively regulated and organized
to protect the economy and workers, including young workers.
Hence, many of the burdens and restrictions imposed on young
workers by the child labor laws no longer are justified by a need
to protect children, because children are covered by laws which
provide protection to all workers.\textsuperscript{50}

During the past two decades, in addition to the changes in
the labor market and in the regulation of labor, a general expan-
sion of civil rights has led to a great improvement in the status
of children under the law. The struggles for equality waged by
minorities, women, the poor, and other deprived segments of soci-
ety have prompted efforts to extend and broaden the rights of
youth.\textsuperscript{51} Supreme Court decisions of the 1960's affirmed the
rights of young people and clarified the fact that children are
persons under the Constitution.\textsuperscript{52} The Court also agreed re-
cently to consider several cases involving children's rights.\textsuperscript{53} In
view of this increasing awareness of the rights of children, it
is not unexpected that legislation limiting children's right to
work should be criticized. Critics of child labor regulation have
contended that youths in America are "no longer weak," but are
"brighter, stronger, healthier, bigger than ever before,"\textsuperscript{54} and
that it follows that so-called protection, in the guise of exclusion
from the world of work, is a denial of children's rights to partici-
pate responsibly in meaningful activities. Unfortunately, the
issues are not easily resolved, because the dividing line between

\textsuperscript{49} See U.S. DEP'T OF LABOR, MONTHLY LABOR REVIEW, Jan. 1974, at
25.

\textsuperscript{50} Another need underlying the child labor laws, the need to pre-
vent interference with school attendance, is effectively addressed by
compulsory school attendance laws. Houlihan v. Raymond, 49 N.J.

\textsuperscript{51} YOUTH TRANSITION, supra note 5, at 41.

\textsuperscript{52} See Tinker v. Des Moines School Dist., 393 U.S. 503 (1969); In-
re Gault, 387 U.S. 1 (1967).

\textsuperscript{53} Stanton v. Stanton, 30 Utah 2d 315, 517 P.2d 1010 (1974), review
granted, 43 U.S.L.W. 3223 (U.S. Oct. 22, 1974) (No. 1461) (review of
ruling that a different period of statutory minority for males than for
females does not violate the equal protection clause). See Goss v. Lopez,
(8th Cir. 1973), vacated and remanded sub nom. Wood v. Strickland, 43

\textsuperscript{54} YOUTH TRANSITION, supra note 5, at 43, quoting Hamburger, Pro-
tection from Participation is Deprivation of Rights, NEW GENERATION,
Summer 1971, at 1-6.
protection and constraint is not sharp. Child labor laws undeniably protect minors in some instances from the harmful effects of some work. Yet these same laws act to deny young people many beneficial work experiences.

III. DESCRIPTION AND EVALUATION OF CHILD LABOR LAWS

Every state has a child labor law.55 The laws follow a common pattern, for many of them were modeled after the Uniform Child Labor Law, first recommended by the National Conference of Commissioners on Uniform State Laws in 1911.56 This pattern has also been shaped by the federal Fair Labor Standards Act of 1938, which regulates occupations deemed to be hazardous to children.57

Reform efforts have led to revision of the child labor statutes in several states. The 1974 Minnesota legislature enacted the Child Labor Standards Act58 "to aid the economic, social, and educational development of young people through employment."59 The Utah legislature reformulated the child labor laws of that state and wrote an exceptionally positive statute in an attempt to encourage "the growth and development of young people through providing work opportunities while at the same time adopting reasonable safeguards to protect them from certain working hazards."60 The Utah law might serve as a model for states such as Massachusetts, whose child labor laws are so complex and restrictive as to intimidate any employer seeking to hire a minor.61 In any event, in order to consider the need for statutory revision, it is necessary first to understand those provisions which are common to most child labor laws.

A. MINIMUM AGE

The central feature of child labor laws is the minimum age

55. See Appendix, infra.
56. NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, ANNUAL REPORT (1911).
58. MINN. STAT. § 181A.01 et seq. (1974).
59. Id. § 181A.02.
60. UTAH CODE ANN. § 34–23–1 (1974).
61. MASS. ANN. LAWS ch. 149, § 56 et seq. (1965 & Cum. Supp. 1973) includes 32 pages of statutes, with six separate sections regulating hours of work for minors, and with restrictions on work in at least 100 different occupations, such as employment in a stable, radio station, factory, workshop, or billiard room; this legislative scheme has not been significantly updated since 1947.
at which a child may legally be employed, either for work during school hours if he is not attending school, or for work outside of school hours or during vacation periods. Several states set the minimum age higher for work during school hours to complement their compulsory school attendance laws. At the present time, approximately half of the states prohibit children under 16 from working outside of school hours, and the other half set the minimum age at 14. Most of the latter states provide for exceptions which, in effect, set the minimum age at 16 for work in factories and at 14 for clerical and retail work.

Although some states have recently revised their statutes establishing these minimums, there has been no trend to either raise or lower the minimum age. The only states to change the minimum age for employment outside of school hours offset each other: Utah changed the age from 14 to 16, and Tennessee from 16 to 14.

If as many jobs as possible are to be made available to the young, then the lower minimum age would be the more desirable. At least half of the states have agreed that children of 14 are able to work at many jobs, particularly if the work does not interfere with schooling.

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62. See Appendix, infra.
64. See Appendix, infra. The federal Fair Labor Standards Act sets 16 as the basic minimum age for employment, but provides such extensive exceptions that the minimum age for employment at nondangerous work is effectively 14. 29 U.S.C. §§ 203(l), 212(c) (1970). See id. §§ 213 (c), (d), (f), 214.
68. E.g., CAL. LABOR CODE § 1291 (West 1971); COLO. REV. STAT. ANN.
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protect children of 14 to 16 from particularly hazardous employment, that can be done simply by restricting employment in specific dangerous jobs. Thus, in order to counteract the inhibiting effect that child labor laws currently have on youth employment, it is crucial that regulations be clear and positive; if children 14 to 16 are to be permitted to work at all but hazardous jobs, the laws should explicitly and positively say so.

In addition, many states allow exceptions to the general minimum age for casual employment and for jobs traditionally undertaken by young people, such as golf caddying and newspaper delivery. Many states also have enacted "street trade" regulations setting minimum ages, usually at 10 or 12, and requiring special permits for children to sell newspapers or to work as scavengers or bootblacks in streets or public places. These laws are now archaic. The hordes of street boys common in the days of Horatio Alger no longer roam the streets of large cities, and the character of the street trades has changed. It would thus be expedient to repeal or radically revise the street trade laws and to include the street trades under regular state and federal child labor restrictions. In states where it is traditional for young children to perform certain tasks, the statutes might provide exceptions for such work. For example, in 1974 the Minne-


69. See, e.g., ILL. ANN. STAT. ch. 48, § 31.2 (Smith-Hurd Supp. 1974) (golf caddying allowed at 12); IOWA CODE ANN. § 92.3 (1972) (migratory labor excepted); KAN. STAT. ANN. § 38-614 (1973) (employment of children by their parents in nonhazardous occupations, domestic service, casual labor in or around a private home, delivery or messenger work, delivering newspapers, and agricultural pursuits excepted); KY. REV. STAT. ANN. § 339.225 (1972) (a minimum age of 11 set for golf caddies); TENN. CODE ANN. § 50-729 (Supp. 1974) (babysitting and casual labor allowed).


sota Child Labor Standards Act repealed the Minnesota Street Trades Act and replaced it with a provision allowing eleven-year-olds to carry newspapers and children of any age to do home chores or to babysit.\textsuperscript{73}

\section*{B. Work During School Hours}

Nearly all the states require full-time school attendance of children between the ages of 6 and 16.\textsuperscript{74} As might be expected, the minimum age for work during school hours corresponds in most states to the compulsory school attendance age.\textsuperscript{75} Even though the legislatures of at least nine states have recently reconsidered their statutes prohibiting young persons from working during school hours, none of those states have changed their laws substantially.\textsuperscript{76} Apparently, most states are satisfied with the pattern of full-time school attendance for young people, allowing full-time, year-round employment only for those youths who have completed their compulsory school requirements or who have been specially released from school for work. Several states provide exemptions for youths employed as apprentices or for students enrolled in vocational training programs.\textsuperscript{77}

Even the seemingly commendable objective of encouraging education by prohibiting the employment of children during school hours is susceptible to criticism and reevaluation. One of the reasons often given for compulsory school attendance is that job opportunities are closed to those who have dropped out of school. In the 1960’s, job analysts concluded that because of automation and technology, there was “no room at the bottom.”\textsuperscript{78}

\begin{quote}
\textsuperscript{73} Minn. Laws 1921, ch. 318, § 1, superseded by Minn. Stat. §§ 181A.07(3), (4) (1974).


\textsuperscript{75} See note 63 supra.


\textsuperscript{78} Heilbroner, No Room at the Bottom, in Work, Youth and Unemployment 114 (1968).
\end{quote}
and as a result the anti-dropout campaign grew to immense proportions. Concurrently, employers throughout the country upgraded their educational requirements, "not because the actual jobs they were hiring beginners for were any more complicated, but just because with more young people competing for work, employers saw the high school diplomas as an easy screening device." 79 Eventually employers and observers of the job market recognized that, in fact, automation had reduced the skill requirements of the work force, and young people were receiving far too much school training for the routine jobs that were available. 80 A problem had developed "with which the United States has had little experience, the existence of a relatively large group of highly educated but underemployed and disappointed young people." 81 The compulsory education and child labor laws compound this problem by compelling children under 16 to spend most of their time in school, denying them the opportunity to become familiar with the world of labor.

The only visible alternative as the laws now stand is for youths to work part-time, thus expanding their horizons and achieving some measure of economic independence. 82 Unfortunately, while part-time work does expand a youth's experiences, most of it is casual and does not provide significant training. 83 Full-time work is more likely to be an important source of the experience and training that will ultimately lead to the youth's responsible independence. For many young people, programs alternating school with full-time work or entirely replacing school with on-the-job training would be more efficient and profitable. 84 The labor laws should, therefore, reflect the relationship between employment and education. Both traditional and experimental vocational programs should be allowed to expand without arbitrary interference from child labor laws or compulsory education requirements.

C. Hours of Work

Perhaps the most restrictive elements of the various state

79. Id. at 117.
81. Youth Transition, supra note 5, at 75.
82. "Whether part-time work has any effect (beneficial or otherwise) on performance in school is something we know almost nothing about." Id. at 66.
83. Id. at 67.
84. See generally id. at 64-91; Goodman, A Proposal to End Compulsory Schooling, in Work, Youth and Unemployment 584 (1968).
child labor laws are those provisions limiting hours of work. Most states allow a maximum eight-hour day and 40-hour work week for minors under 16. Some states prohibit a child who is attending school from working more than three or four hours on school days, or limit to 10 the combined hours of school and work. It is inevitable that these limitations on hours of work discourage the employment of minors. Further, they deny youths the opportunity of earning time-and-a-half for overtime work under the federal Fair Labor Standards Act. Apparently, most legislators feel that the dangers of overworking young people outweigh the advantages that might accrue if they could work longer hours. While it is difficult to recommend that anyone be "allowed" to work a 54-hour week, the objective of avoiding prejudice against the hiring of young people requires only that the standards set for youths, particularly those who are no longer in school, not vary greatly from those applied to adults.

Statutes prohibiting the employment of children during certain hours of the night are currently targets of extensive legislative reform. Legislators theorize that juvenile crime occurring during the night could be reduced by allowing teenagers to work later. Earlier concern that children working at night might be easy prey for criminals has been replaced by concern that teenagers not working at night are themselves becoming criminals. Recently the Iowa legislature extended the hours children under 16 could work on summer nights from 7:00 to 9:00. Similarly, the Arkansas legislature's response to a declared juvenile delinquency emergency was to extend the permissible hours of work on weekend nights. In Kansas children under 16 can work un-


86. See, e.g., ILL. ANN. STAT. ch. 48, § 31.3 (Smith-Hurd Supp. 1974) (three hours); IOWA CODE ANN. § 92.7 (1972) (four hours); UTAH CODE ANN. § 34-23-3 (1974) (four hours).


89. IOWA CODE ANN. § 92.7 (1972).

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Until 10:00,91 as can minors under 18 in New Jersey.92 In New Mexico children under 14, who were once prohibited from working after 7:00, can now work until 9:00.93 Minors under 16 in North Carolina, who in the past could only work until 6:00, can now work until 7:00 before school days and until 9:00 on other days.94 In Utah children under 16 can work until 9:30.95 And the legislature in Pennsylvania extended work hours during summer vacation from 7:00 to 10:00 for youths 14 and 15, and to midnight for youths 16 and 17.96 Whether or not these extensions of permissible hours for night work will have any effect on juvenile delinquency, the extensions are consistent with a general policy of encouraging employment opportunities for young people. The actions of these state legislatures suggest that the right of young people to work will no longer be denied under the guise of a protective policy.

D. HAZARDOUS OCCUPATIONS

The theory that young, generally inexperienced workers need special protection from exposure to industrial hazards has been accepted by state legislatures for many years. In effect, the higher minimum age for employment in hazardous occupations closes a broad range of jobs to youth, but state and federal authorities have not been eager to reconsider whether occupations once considered too hazardous for youths might now provide acceptable employment opportunities. All the states restrict employment in certain hazardous occupations.97 The lists of prohibited occupations are complex and often very vague. In addition, most states have authorized special commissions98 or labor departments99 to investigate and declare what occupations are

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hazardous for minors. The new Minnesota Child Labor Standards Act replaces an outdated list of hazardous occupations with a provision empowering the Commissioner of Labor to promulgate a list of dangerous jobs prohibited to youths.\footnote{100}

The Federal Fair Labor Standards Act specifically preserves the state laws, but in situations where both are applicable the more stringent standard must be observed.\footnote{101} The federal Act also gives the Secretary of Labor authority to declare employment in certain occupations to be particularly hazardous to children between the ages of 16 and 18.\footnote{102} Under this delegated authority, the Secretary has established procedures for making such determinations, including investigations and statistical surveys by trained personnel, comments from interested persons, and hearings.\footnote{103} The Secretary has not, however, promulgated specific criteria for determining whether an occupation is particularly hazardous; nor has he established a procedure for regular review of previous determinations. The list of 17 occupations declared hazardous\footnote{104} has not been significantly amended in the

\begin{footnotes}
\item[101] 29 C.F.R. § 570.9 (1974). See also id. § 570.6; Youth Unemployment, supra note 29, at 15.
\item[104] (1) Occupations in or about plants or establishments manufacturing or storing explosives or articles containing explosive components, added 1963; (2) occupations of motor-vehicle drivers and outside helpers, added 1963; (3) coal mine occupations, added 1963; (4) logging occupations and occupations in the operation of any sawmill, lathe mill, shingle mill, or cooperage-stock mill, added 1967; (5) occupations involved in the operation of power-driven woodworking machines, added 1963; (6) occupations involving exposure to radioactive substances or to ionizing radiations, added 1963; (7) occupations involved in the operation of elevators and other power-driven hoisting apparatus, added 1967; (8) occupations involved in the operation of power-driven metal forming, punching, and shearing machines, added 1963; (9) occupations in connection with mining, other than coal, added 1963; (10) occupations involving slaughtering, meatpacking or processing, or rendering, added 1963; (11) occupations involved in the operation of certain power-driven bakery machines, added 1963; (12) occupations involved in the operation of certain power-driven paper-products machines, added 1963; (13) occupations involved in the manufacture of brick, tile, and kindred products, added 1963; (14) occupations involved in the operation of circular saws, band saws, and guillotine shears, added 1963; (15) occupations involved in wrecking, demolition, and ship-breaking operations, added 1963; (16) occupations involved in roofing operations, added 1963; (17) occupations involved in excavation operations, added 1963. Id. §§ 570.51-.68.
\end{footnotes}
last decade, despite the upgrading of job safety standards throughout the United States.\textsuperscript{105}

The federal list of hazardous occupations has had a widespread influence, because those states that have amended their hazardous occupations regulations have amended them to mirror federal law.\textsuperscript{106} Other states, however, have retained the lists of hazardous occupations written at the turn of the century.\textsuperscript{107} The state and federal laws frequently prohibit relatively safe employment while permitting employment that appears to be more hazardous.\textsuperscript{108} For example, these laws often restrict the use of ma-

\textsuperscript{105} U.S. DEP'T OF LABOR, MONTHLY LABOR REVIEW, Jan. 1974, at 25.


\textsuperscript{108} The work-injury rates published by the government indicate that some categories of jobs are prohibited even though they are safer than other jobs not regulated at all. See U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, HANDBOOK OF LABOR STATISTICS 361-78 (1972). The injury rates shown include all classes of disabling work injuries—those which occur in the course of and arise out of employment and which result in death, permanent impairment, or temporary/total disability. The \textit{injury-frequency rate} is the number of disabling work injuries for each million employee-hours worked. The \textit{injury-severity rate} is the number of days of disability resulting from disabling work injuries for each million employee-hours worked.

\textbf{Work Injury Rates 1970}

\textbf{I. Occupations classified as hazardous by the Federal Labor Standards Act}

\begin{center}
\begin{tabular}{|l|c|c|}
\hline
 & Injury & Injury \\
 & Frequency & Severity \\
\hline
1. Occupations involving manufacture & 9.3 & 210 \\
of storage of explosives & & \\
2. Trucking & 35.6 & 2,335 \\
3. Coal mining & 41.6 & 7,792 \\
4. Other mining and milling & & \\
Metal mining and milling & 23.7 & 3,238 \\
Nonmetal mining and milling & 24.1 & 2,624 \\
5. Logging and sawmill occupations & & \\
Logging occupations & 42.4 & 6,157 \\
Sawmill occupations & 35.5 & 3,478 \\
6. Manufacture of furniture & 22.0 & 960 \\
7. Occupations involving wood-working & & \\
machinery & 22.5 & \\
8. Occupations involving exposure to & & \\
radioactive substances & — & — \\
9. Occupations involving elevators and & & \\
other power-hoisting apparatus & — & — \\
10. Occupations involving metal & & \\
forming, punching, and shearing & 20.6 & 1,181 \\
\hline
\end{tabular}
\end{center}
chinery which at one time was the cause of many work-related injuries, but which has now been made safe. Moreover, the restriction of such safe machinery, as well as machinery that is no longer in use at all, results in statutes that are unduly long and complex. Because such statutes are not well understood, many employers simply do not hire young people, in order to avoid unintentional violations.\textsuperscript{109} If all jobs appropriate for young people are to be made legally and realistically accessible to them, then these hazardous occupation prohibitions must be carefully reevaluated in the light of new industry-wide safety standards and technological advances.\textsuperscript{110}

E. \textbf{SEX-BASED DISCRIMINATION}

Attempts to clarify the rights of youth may be in many re-

\begin{center}
\begin{tabular}{lll}
11. Meat processing & 46.9 & 1,194 \\
12. Occupations involving bakery machines & 22.6 & 793 \\
13. Occupations involving paper products machines & 13.9 & 937 \\
14. Manufacture of brick, clay tile, etc. & 38.5 & 1,716 \\
& Manufacture of concrete products & & \\
& excluding block and brick & 49.5 & 3,096 \\
15. Occupations involving saws, band saws, and guillotine shears & & \\
16. Wrecking, demolition, ship-breaking & 26.8 & 1,604 \\
17. Roofing & 45.0 & 2,218 \\
18. Excavating & & \\
\hline
II. Occupations included within the broad prohibited categories that have very low work-injury rates: & & \\
1. Gypsum mining & 4.6 & 2,358 \\
& Phosphate rock mining & 5.2 & 2,021 \\
2. Manufacture of cutlery, handtools and general hardware & 9.5 & 550 \\
3. Pulp mill occupations & 8.2 & \\
& Paper mill occupations & 7.3 & 727 \\
\hline
III. Occupations with comparably high injury rates that are not classified as hazardous: & & \\
1. Dairy products processing & 25.1 & 1,208 \\
2. Canned and cured sea foods processing & 41.9 & \\
3. Frozen fruits, juices, and vegetables processing & 24.9 & 1,487 \\
4. Production of prepared feed for animals and fowls & 25.0 & 1,392 \\
5. Beet sugar processing & 42.3 & \\
6. Production of bottled and canned soft drinks & 38.1 & 975 \\
7. Leather tanning and finishing & 38.5 & 1,913 \\
8. Manufacture of concrete, gypsum, and plaster products & 38.8 & 2,843 \\
9. Construction, general contractor & 32.7 & 3,616 \\
10. Plumbing & 35.9 & 1,174 \\
11. Masonry & 30.8 & 1,463 \\
12. Occupations involving wholesale groceries & 23.0 & 735 \\
\hline
\end{tabular}
\end{center}

\textsuperscript{109} \textit{Youth Unemployment}, supra note 29, at 130. \textit{See also} \textit{id.} at 122, 128-29.

\textsuperscript{110} \textit{See} text accompanying notes 42-49 supra,
spects tied to recent efforts to provide employment equality for women and minorities. The child labor laws were often passed in conjunction with labor regulations limiting the employment of women; the latter have since been successfully attacked as denying equal protection on the basis of sex. However, the female minor attacking protective legislation may not be as successful as her elders. A recent Wisconsin Supreme Court decision, Warshafsky v. Journal Co., upheld the constitutionality of the Wisconsin Street Trades Statute. The statute prohibits girls from employment in street trade occupations, such as newspaper delivery, messenger work, and bootblacking, until they reach 18, but permits boys 12 years or older to work at such trades. The Wisconsin court observed that the United States Supreme Court has not included sex among those classifications which are inherently suspect and reasoned that girls, as possible victims of rape, are in greater danger on the streets than are boys. Hence, the state interest in protecting “the health, safety and morals of its juveniles” justified, in the court’s opinion, the exclusion of girls from street trades. In making this decision, the Wisconsin court chose to disregard federal Equal Employment Opportunity Commission guidelines which provide that compliance with state laws treating minors of different sexes differently should not be considered a defense to an otherwise unlawful or discriminatory employment practice. The federal courts have not ruled whether sex plus minority status is a valid occupational qualification in state labor legislation. One federal court, however, has ruled that laws which prohibit women from working overtime are in conflict with the equal employment provision of the Civil Rights Act of 1964. Laws prohibiting girls from working until they are 16 or 18 while allowing boys to work at 12 or 14 are necessarily based on stereotyped characterizations of boys and girls and do not take into account individual capacities, preferences, and skills. These laws have adversely affected

111. YOUTH TRANSITION, supra note 5, at 41.
112. E.g., CAL. LABOR CODE § 1290 et seq. (West 1971); MASS. ANN. LAWS ch. 149, § 56 et seq. (1965); N.M. STAT. ANN. §§ 59-5-2 et seq., 59-6-1 et seq. (1974).
114. 63 Wis. 2d 131, 216 N.W.2d 197 (1974).
115. Wis. STAT. ANN. § 103.23 (1974).
116. 63 Wis. 2d at 133, 216 N.W.2d at 199.
the employment opportunities of girls, who are thus doubly disad
d advantaged and restricted. Until recently, nearly all the
states had laws similar to the Wisconsin statute. Although
many states have now amended their laws to apply equally to
boys and girls, generally lowering the minimum age of employ-
ment for girls so that it is the same as that for boys, it is
clear that some states still predicate their child labor legislation
on the sex role models implicit in antiquated child labor laws.

F. Enforcement

1. Certification Systems

In many states, the basic means of enforcing the child labor
laws is a certification system: the state requires that an employ-
ment certificate be procured for each young worker, either by
the employer or by the child himself. Except for a few states
such as Colorado and Utah, which have revised their certifi-
cation procedures with a view toward encouraging youth employ-
ment, the work certificate systems are quite complicated. They

119. See Annot., 12 A.L.R. Fed. 15 (1972); Youth Unemployment,
supra note 29, at 19; Developments in the Law—Employment Discrimina-
tion and Title VII of the Civil Rights Act of 1964, 84 Harv. L. Rev. 1109,
1186-95 (1971).

Labor Code §§ 1297-98 (West 1971); Minn. Stat. § 181.43 (1971); Pa.

Code Ann. §§ 92.1-8 (1972); Minn. Laws 1974, ch. 432, § 13, repealing

122. New Jersey prohibits boys under 14 and girls under 18 from
1974). Pennsylvania prohibits boys under 12 and female minors from

123. See Appendix, infra; e.g., Cal. Labor Code §§ 1299-1300 (West
Stat. § 390-3 (Supp. 1974); Ill. Ann. Stat. ch. 48, §§ 31.9-13 (Smith-
§§ 38-604, -606 to -610 (1973); Minn. Stat. §§ 181A.05-.06 (1974); N.C.
Standards Act provides that an employer may protect himself against
unintentional violations of the minimum age provisions by obtaining and
keeping on file an age or employment certificate for each minor em-


§ 34-23-10 (1974).
place a burden on employers to procure or at least to examine
and retain the certificate of each young worker. This burden
is not imposed for the employment of older workers; hence, it
inevitably discourages the employment of young workers. Many
states further require that a separate certificate be procured for
each job, and that the employer sign a pledge of employment
before a child can obtain a permit. Generally the school sys-
tem is responsible for issuing the work permits. The certifica-
tion system, moreover, is used as a means of checking on the
health of young people, and in some states a physician’s report
is required before a child is permitted to work at any job.

The inconvenience and expense of work certificates were
cited in government surveys as considerations affecting employ-
ners’ decisions not to hire teenagers. The need to simplify cer-
tification procedures and make them more inexpensive is there-
fore clear. The Colorado and Utah statutes take different ap-
proaches toward the simplification of their work permit proce-
dures. The Colorado law provides that the work permit be issued
by the school superintendent at the request of the minor and
requires a minimum of information about the child’s age and the
hours he or she can work. No physical examination is required.
The employer keeps the certificate as long as the child continues
working and then returns the certificate to the minor who can
use it for other jobs.

126. E.g., CAL. LABOR CODE §§ 1299-1300 (West 1971); DEL. CODE ANN.
tit. 19, § 541 (Cum. Supp. 1970); HAWAI'I REV. STAT. § 390-3 (Supp. 1974);
IOWA CODE ANN. § 92.10 (1972); KAN. STAT. ANN. §§ 38-604 (1973).
127. See, e.g., DEL. CODE ANN. tit. 19, § 545 (Cum. Supp. 1970);
HAWAI'I REV. STAT. § 390-3 (Supp. 1974); ILL. ANN. STAT. ch. 48, § 31.12
(Smith-Hurd Supp. 1974); IOWA CODE ANN. § 92.10 (1972); KAN. STAT.
ANN. §§ 38-606 (1973); MASS. ANN. LAWS ch. 149, § 87(1) (1965); N.J.
STAT. ANN. § 34:2-21.3 (Cum. Supp. 1974); MINN. STAT. § 181A.05
(1974); N.M. STAT. ANN. §§ 59-6-8 (1974); N.Y. LABOR LAW § 135 (Mc-
128. See, e.g., DEL. CODE ANN. tit. 19, § 544 (Cum. Supp. 1970); ILL.
ANN. STAT. ch. 48, § 31.11 (Smith-Hurd Supp. 1974); IOWA CODE ANN.
§ 92.11 (1972); KAN. STAT. ANN. §§ 38-606 (1973); MASS. ANN. LAWS
ch. 149, § 87 (Cum. Supp. 1973); MINN. STAT. § 181A.05 (1974); N.J.
STAT. ANN. §§ 34:2-21.1(c), .8 (Cum. Supp. 1974); N.M. STAT. ANN.
§ 59-6-8 (1974).
129. See, e.g., DEL. CODE ANN. tit. 19, § 545 (Cum. Supp. 1970); ILL.
ANN. CODE ch. 48, § 31.12(4) (Smith-Hurd Supp. 1974); MASS. ANN.
LAWS ch. 149, § 87(3) (1965); N.J. STAT. ANN. § 34:2-21.8(3) (Cum.
Supp. 1974). Other states require the issuer of a certificate to
ascertain that the child is in good health. MINN. STAT. § 181A.05(3)
(1974); N.M. STAT. ANN. § 59-6-8 (c) (1974); N.Y. LABOR LAW § 139 (Mc-
130. YOUTH UNEMPLOYMENT, supra note 29, at 183.
that school districts shall cooperate with employers by issuing age certificates, but that such certificates are not required and do not relieve the employer of the duty to comply with the child labor laws.\textsuperscript{132}

In contrast to the Utah and Colorado laws, the recently revised Minnesota law retains an elaborate certification system. The law provides that any minor under 16 must secure an employment certificate before working during school hours.\textsuperscript{133} The issuing officer has broad discretion to deny or cancel the certificate. The employer has the burden of returning the certificate to the issuing officer upon termination of the child's employment, and the child is required to procure a certificate for every job. In addition, the Minnesota statute requires that every employer obtain proof of age or an age certificate from every minor employee.\textsuperscript{134} Although the requirement of obtaining a work certificate is thus eased by the recent amendment, the provision for proof of age for all working minors has been added. The Minnesota law will undoubtedly continue to inhibit the employment of teenagers: the certification requirements impose obligations on both the young worker and the employer which may be sufficiently irritating or confusing to prevent the employment of the young person. This is in contrast to the less onerous certification systems of Colorado and Utah, which eliminate unnecessary hurdles for prospective workers and employers and thereby encourage the employment of minors.

2. Criminal Penalties

Penalties for violations of child labor laws include fines ranging from 25 dollars for each offense in North Dakota\textsuperscript{135} to a fine of 10,000 dollars for the second violation of the federal law.\textsuperscript{136} Several jurisdictions also provide for imprisonment for violating the laws.\textsuperscript{137} The paucity of reported cases indicates that criminal sanctions are rarely imposed. Yet in some states the threat exists even for unknowing violations of the law,\textsuperscript{138} and this may

\textsuperscript{132} Utah Code Ann. § 34-23-10 (1974).
\textsuperscript{133} Minn. Stat. § 181A.05 (1974).
\textsuperscript{134} Id. § 181A.06.
intimidate employers who are uncertain about certification requirements. If the laws are to encourage rather than inhibit the employment of young people at appropriate jobs, it would appear the criminal sanctions and penalties, especially those attached to unintentional violations of complex and confusing laws, should be repealed.

3. Workmen’s Compensation

Workmen’s compensation laws are as intimidating as criminal penalties, especially since their frequent litigation makes them more visible. The workmen’s compensation laws of approximately a third of the states require extra compensation, usually double, for a minor who is injured while illegally employed. Under most of these laws, the additional compensation cannot be covered by insurance and the employer is held specifically liable for payment. While not a restriction on unlawful employment per se, this type of requirement inevitably affects employer practices to the detriment of prospective young workers. Consequently, if artificial restrictions on the employment of youth are to be removed, it will be necessary to eliminate these punitive aspects of workmen’s compensation. Although the awards to injured youths should take their age into account, employers should be allowed to insure against possible liability, and the workmen’s compensation laws should not be used to enforce the child labor laws.

IV. MINIMUM WAGE LAWS

A. Effect and Incentive

While the restrictions imposed by the child labor laws have popularly been considered to have only a slight impact on teenage unemployment, minimum wage laws have often been accused of aggravating that unemployment. As a result, several jurisdictions, including many that have been lax in modernizing their child labor laws, have experimented with lower mini-

141. Youth Transition, supra note 5, at 44.
142. Id. at 72, 168.
143. Although the California law was recently amended slightly, it still continues to be cumbersome and confusing. Cal. Labor Code § 1290 et seq. (West 1971). New Jersey retains most of the prohibitions and
mmum wage rates for youth, hoping that this will open jobs to young people.\textsuperscript{144} According to some economic theorists, wages set higher than the rate that would prevail in a free market must result in some workers not being able to find jobs.\textsuperscript{145} The workers left unemployed will probably be those who are less productive, either because they are inexperienced or because they are inadequately trained or equipped. It is generally assumed that since young people tend to be inexperienced they are rapidly priced out of the labor market. Their potential contribution to the economy—their marginal productivity—may be less than the increasing minimum wage.\textsuperscript{146} Theoretically, therefore, minimum wage laws might be one cause of the teenage unemployment problem, although their impact is yet to be accurately measured.\textsuperscript{147} 

The contention that minimum wage laws cause teenage unemployment is not unequivocally supported by government studies of the relation between federal minimum wage rate increases and youth unemployment.\textsuperscript{148} The federal minimum hourly wage rate has been periodically increased until it is now $2.10 for most of the numerous jobs covered.\textsuperscript{149} Of even greater importance to the teenage job market is the expansion of the coverage of the minimum wage laws to many retail and service jobs,\textsuperscript{150} at which a large proportion of teenagers are employed.\textsuperscript{151} The retail and service industries encompass many low-wage jobs affected by the 1966 increases in the minimum wage rate.\textsuperscript{152} Government studies have not produced a uniform set of statisti-


\textsuperscript{146} \textit{Id.}

\textsuperscript{147} \textit{Youth Unemployment, supra} note 29, at 187.

\textsuperscript{148} \textit{Id. at} 187.

\textsuperscript{149} 29 U.S.C.A. § 206(a) (1) (Supp. 1975).


\textsuperscript{151} \textit{Youth Unemployment, supra} note 29, at 55.

\textsuperscript{152} \textit{Id. at} 181.
cal conclusions, but after the law was expanded in 1966 to cover many teenage jobs, the rise in teenage unemployment which might have been expected did not occur. The inability of the statistical analysts to find any significant relationship between minimum wage rates and youth unemployment led them to the conclusion that if the minimum wage increases did create unemployment among youth, the effect was not a pronounced one. Although more recent studies have detected a somewhat larger effect, there is still no conclusive evidence that as a result of increased minimum wages it is more difficult for youth to find and keep jobs.

B. THE YOUTH DIFFERENTIAL

In theory, the lower quality of teenage labor could be offset by paying young workers a lower wage. Consequently, the federal government and many of the states have established a differential rate for youth on the basis of age, education, or work experience. Under the Fair Labor Standards Act, certain employers can hire student-workers at 85 percent of the minimum wage. Most of the states with minimum wage laws allow a youth differential of 75 or 85 percent of the corresponding adult minimum. A study of the utilization of the federal youth differential indicates that employers who are eligible to hire youths at 85 percent of the minimum wage do not fully make use of the opportunity. Furthermore, there is evidence that lower minimum wage rates for youth under state law might not ma-

153. The most important—and at the same time discouraging—conclusion to emerge from available analyses is that they do not permit confident conclusions about the effect of minimum wage laws upon the employment experience of teenagers. When all variables that have a legitimate claim to consideration are included, the measures of minimum wage not infrequently have the wrong sign and/or are not statistically significant at conventional levels.

Id. at 44-45.

154. Id.

155. Thus, as a result of increased minimum wages, teenagers are able to obtain fewer jobs during periods of normal employment growth and their jobs are less secure in the face of short-term employment changes.


158. Youth Unemployment, supra note 29, at 111.
terially affect the problem of youth unemployment.\footnote{159} Apparently young people are unwilling to work for less than the minimum wage, and employers are unwilling to hire teenagers, who often lack training, education, or experience.\footnote{160}

Lower minimum wage rates for youth, particularly in times of recession, could lead to the kind of exploitation which first made necessary the protective child labor laws. It could well be argued that any wage below the minimum rate is inadequate to support a person, and that it would be unfair to pay less than a subsistence wage. Even though most teenagers do not work to support themselves,\footnote{161} they do compete in the labor market with people who do support themselves and their families. Often teenagers are competing for jobs with women, minorities, and older people who have limited job opportunities\footnote{162} and who may be subject to employer prejudices against them as great as the prejudices against young workers. Thus, as young people are pressured by the differential minimum wage rates to accept less than prevailing wages, they are given a legal advantage over other workers who may need the jobs but who are unable to work legally for less than the adult minimum wage. Nevertheless, the Panel on Youth of the President's Science Advisory Committee recently proposed that there be experimentation with a dual minimum wage, lower for minor than for adult workers.\footnote{163}

Eight of the ten advisors agreed that the minimum wage laws discourage the employment of young people whose productivity is not yet adequate and that a differential minimum wage would be an incentive for employers to provide general on-the-job training for the young. Two members of the panel dissented, pointing out that, although cheap labor may encourage the employment of youth, it would be at the possible cost of adult unemployment. The two panel members contended that if the same suggestion for a subminimal wage were made for blacks, women, or other underemployed groups, its unfairness would be apparent.\footnote{164}

While the risks of the differential minimum wage rates are significant, the advantages are nebulous and as yet unproved. Less hazardous means of encouraging youth employment are still untried. It seems reasonable to first open the way to increased

\footnotesize{159} Id. at 125. 
\footnotesize{160} Id. at 130. 
\footnotesize{161} Id. at 104. 
\footnotesize{162} Id. at 60. 
\footnotesize{163} Youth Transition, supra note 5, at 168. 
\footnotesize{164} Id. at 179.
youth employment by clearing away the legal obstacles currently faced by young workers.

V. REVISION OF CHILD LABOR LAWS

Although child labor laws are not the major or even a primary cause of youth unemployment, their complexity, the inconvenience of compliance, and the penalties attached to even unwitting violations are factors in discouraging the employment of youth. Social and economic circumstances have changed in the last half century, and the purposes and direction of the child labor laws must also change to reflect the growing need to encourage employment for young people and to eliminate unnecessary restrictions on youths' civil freedoms. The following statute is proposed in keeping with the arguments advanced in this Note that child labor laws should be revised so as to encourage the employment of youth by removing restrictions unnecessary for the protection of young people:¹⁶⁵

1. Permitted occupations with no specific age limitations or restrictions. With the consent of a minor's parent, guardian, or custodian, no specific age limitations or restrictions shall apply to:

a. Minors employed by their parents in nonhazardous occupations;

b. Domestic service in private homes;

c. Casual labor in or around private homes;

d. Delivering or distributing newspapers or shopping-news circulars;

e. Golf caddying.

2. Permitted occupations for minors 14 or older. Minors 14 years of age or older shall be permitted to work in all occupations not declared hazardous under section 4 of this Act. No minor under 14 years of age shall be at any time employed at any occupation or trade in any business except as provided by this Act.¹⁶⁶

3. Employment of minors under 18 in hazardous occupations. No minor under 18 years of age shall be employed or permitted to work in any hazardous occupation as defined by the United States Department of Labor under provisions of the Fair Labor Standards Act or as defined by the industrial commission under section 4 of this Act, except that the commission is authorized to make exceptions when the minor is under careful supervision in connection with or following completion of an apprenticeship.


¹⁶⁶ See text accompanying notes 62-73 supra.
program, vocational training, or a rehabilitation program as approved by the commission.167

4. Duties and powers of the industrial commission. The industrial commission shall promulgate specific regulations and standards for defining what occupations shall be prohibited as hazardous under this Act, shall declare such occupations to be hazardous, and shall prescribe what types of equipment shall be required to make an occupation nonhazardous for minors. The commission shall regularly review and investigate to determine if occupations should be deleted from or added to the list of occupations particularly hazardous for minors.168

5. Work permit. Any employer desiring proof of the age of any minor employee or prospective employee may require the minor to submit a work permit. Upon request of a minor, a work permit shall be issued by or under the authority of the school superintendent of the district or county in which the minor resides. The superintendents or principals of independent or parochial schools shall issue work permits to minors who attend such schools.

   a. The work permit shall show the age of the minor; the name, address, and description of the minor, the date of his birth; the date of issuance of the permit; the name and position of the issuing officer; and the type of evidence accepted as proof of age. The work permit shall also show the school hours applicable and shall state that no minor under 16 may work on regular school days during such school hours.

   b. A work permit shall not be issued unless the minor is at least 14 years of age and the minor’s birth certificate or other reliable evidence of age, including the oath of parent or guardian, is offered to the issuing school official.

   c. The employer who requests and keeps on file a work permit for a minor employee is entitled to rely on such a permit as evidence of age and legal hours of work.

   d. Upon termination and upon request, the work permit shall be returned to the minor.169

6. Workmen’s compensation. All minors, whether lawfully or unlawfully employed, shall be subject to the rights and remedies of the workmen’s compensation act of this state. No employer shall be required to pay additional compensation to an injured minor because the minor was employed unlawfully.170

7. Minimum wage. The state and federal minimum wage laws shall apply to minors without variations in rates on the basis of age.171

8. Discrimination prohibited. These labor standards shall apply to minors equally without regard for sex, and shall in no way be considered a defense to an otherwise unlawful employment practice.172

167. See text accompanying notes 97-101 supra.
168. See text accompanying notes 102-10 supra.
169. See text accompanying notes 123-38 supra.
170. See text accompanying notes 139-40 supra.
171. See text accompanying notes 141-64 supra.
172. See text accompanying notes 111-22 supra.
VI. CONCLUSION

The child labor laws now in effect in most states were originally enacted to protect children from hazardous work, long hours, and low pay. Economic and social circumstances have changed. Now the inability of young people to find any work is a major social and economic problem. The child labor laws enacted to deal with the undeniable abuses of child labor during the nineteenth and early twentieth centuries are not suitable for the 1970's. Safe jobs, appropriate for young people, are closed to them because of needlessly cumbersome and restrictive child labor laws. Furthermore, minors' legal rights in other fields are currently being expanded and redefined by the courts and society generally. Yet in child labor laws young people still encounter restrictions and legal burdens which can be justified only by an antiquated paternalism that denies the individual needs and capabilities of young people.

Too few states have reconsidered and simplified their child labor laws in recent years. Provisions concerning hours of work, prohibited occupations, work certificates, and minimum wages ought to be analyzed by each state legislature in light of current economic conditions and past experience with child labor regulations. The states can benefit from the experience of Utah, whose policy it is “to encourage the growth and development of young people through providing work opportunities while at the same time adopting reasonable safeguards to protect them from certain working hazards.”173

### Appendix

**SUMMARY OF MAJOR PROVISIONS OF STATE CHILD LABOR LAWS**

The following categories are necessarily broad; individual statutes should be consulted for specific provisions:

- **Column 1**—Minimum age for work in heavy industry
- **Column 2**—Minimum age for safe work outside of school hours
- **Column 3**—Minimum age for work during school hours
- **Column 4**—Requirement of a certificate
- **Column 5**—Maximum hours per week
- **Column 6**—Time (a.m. - p.m.)
- **Column 7**—Date of last major revision

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**CHILD LABOR LAWS**
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<td>Nev. Rev. Stat. § 609.190 et seq. (1973)</td>
<td>14e</td>
<td>no limit with cert.</td>
<td>14</td>
<td>under 14 yrs.: judge's permission</td>
<td>48</td>
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<td>(school weeks: 23)</td>
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<tr>
<td>16-18 yrs.: 7-10-11b</td>
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<tr>
<td>State</td>
<td>Section Details</td>
<td>Minimum Age</td>
<td>Maximum Age</td>
<td>Additional Notes</td>
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<td>N.Y. Labor Law §§ 130-40, 170-78 (McKinney 1965 &amp; Supp. 1974)</td>
<td>17e, 14, 16, req.</td>
<td>7-7</td>
<td>1972</td>
<td>6-12b</td>
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<td>N.D. Cent. Code § 34-07-01 et seq. (1972 &amp; Supp. 1973)</td>
<td>16, 14, 14, req.</td>
<td>7-7-9b</td>
<td>1943</td>
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<td>Ohio Rev. Code Ann. § 4109.01 et seq. (Page 1973)</td>
<td>16, —, 16, req.</td>
<td>6-10-12b</td>
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<td>Ore. Rev. Stat. § 653.305 et seq. (1973)</td>
<td>14, 12, 14, req.</td>
<td>7-6</td>
<td>1971</td>
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<td>S.D. Compiled Laws Ann. § 60-12-1 et seq. (1967 &amp; Supp. 1974)</td>
<td>16f, —, 16f, req.</td>
<td>7-10</td>
<td>1969</td>
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<td>State</td>
<td>Law Reference</td>
<td>Min</td>
<td>Max</td>
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<tr>
<td>West Virginia</td>
<td>Code Ann. § 21-6-1 et seq. (1973)</td>
<td>16</td>
<td>no limit with cert.</td>
<td>-</td>
<td>req.</td>
<td>5-8</td>
<td>1939</td>
</tr>
</tbody>
</table>

\[ \text{a. All states must comply with the federal prohibition against youth under 18 working in hazardous occupations.} \]
\[ \text{b. Later hours for nights before days without school or during summer vacations; the later hours are noted where statutorily specified.} \]
\[ \text{c. As young as 8 for very safe jobs.} \]
\[ \text{d. Fourteen-year-olds may harvest coffee.} \]
\[ \text{e. Lower age if certificate is procured.} \]
\[ \text{f. Proof of literacy required.} \]