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2010 REPORT ON EMPLOYMENT OF MINORS IN AGRICULTURAL PACKING PLANTS

Background and Introduction

Assembly Bill (AB) 1900 (Chapter 1175, Statutes of 1994) also known as the Omnibus Child Labor Reform Act of 1993 became effective on January 1, 1995. Among other provisions, the bill added Labor Code §1393, authorizing the Labor Commissioner, Chief of the Division of Labor Standards Enforcement (DLSE) within the Department of Industrial Relations (DIR), to grant exemptions to the limitation of the number of hours that 16- and 17-year-old minors may work in a day at an agricultural packing plant during peak harvest season when school is not in session. The law authorized the Labor Commissioner to grant an exemption to allow minors to work up to ten hours per day, rather than eight hours, if the additional work hours did not materially affect the safety and welfare of the minor. Senate Bill (SB) 1988 (Chapter 1117, Statutes of 1996) authorized the Lake County Board of Education to permit the employment of 16- and 17-year-old minors for up to sixty hours per week when school was not in session during the peak harvest season. This law was scheduled to sunset on January 1, 1999, but the date was extended to January 1, 2002 by the enactment of SB 2054 (Chapter 237, Statutes of 1998).

SB 912 (Chapter 345, Statutes of 2001) amended Labor Code §1393.5 to require the Labor Commissioner to annually inspect Lake County agricultural packing plants that apply for an exemption or renewal of an exemption authorized by the section. The law requires agricultural packing plants that receive such an exemption to submit to the Labor Commissioner an annual report on the number, ages, and working hours of minors that were employed during the preceding year. In addition, the Labor Commissioner is required to report to the Legislature on the working conditions of minors employed in the plants during the preceding year. SB 912 extended the sunset date for the provisions of Labor Code §1393.5 to January 1, 2005. SB 1134 (Chapter 151, Statutes of 2004) extended the sunset date to January 1, 2008.

SB 319 (Chapter 269, Statutes of 2007) amended Labor Code §1393.5 by extending the sunset date to January 1, 2012. The bill further revised the provisions relating to Lake County by limiting the hours of work exemption to the employment of minors, 16 or 17 years of age, who reside in Lake County upon prior written approval of the Lake County Office of Education. SB 319 also deleted the requirement that a minor be enrolled in school in Lake County for the exemption to apply.

The following is a report of the working conditions of minors employed in agricultural packing plants in 2010.

Exemptions Issued, Renewed, or Denied Pursuant to Labor Code §1393.5

In 2010, pursuant to Labor Code §1393.5, an application was submitted by one Lake County employer operating in two locations for exemption to authorize employment of minors for more than 48 hours but not to exceed 60 hours in any one week. The Labor Commissioner issued the exemption to the employer for both locations. The employer held a valid exemption in 2009. At the conclusion of the 2009 season, one employer who historically held an approved exemption was found, upon inspection, to be in violation of multiple wage and hour laws, and was cited. This employer was told at the end of the 2009 season that it would not be eligible for an exemption for the 2010 season and did not apply.

In addition to the Lake County employer, seven packing operations outside of Lake County applied for exemption. All seven were approved and permits issued.

Number of Minors Employed in the Agricultural Packing Plant Industry

According to records of the Lake County agricultural packing plant employer operating with an approved exemption in 2010, a total of 24 minors aged 16 and 17 years old were employed during the 2010 peak packing season. Of those 24, one individual turned 18 early in the season. Two minors aged 15 years old were employed on a schedule of no more than 8 hours per day and/or 40 hours a week.

The seven additional packing operations with approved exemptions statewide in 2010 were granted approval to employ an additional 99 minors under the provisions of these permits.

Information regarding youth employment among the youth labor force ages 16 through 24, particularly during the summer months, is collected as part of the U.S. Department of Labor, Bureau of Labor Statistics (BLS) studies. Data is not reported by detailed sub-classifications of industry, age, or state/county of residence. For these reasons, the number of California minors employed in specific agricultural services (i.e., agricultural packing plants) in California and/or Lake County is unknown beyond those agricultural packing plants actually applying for exemptions, with inspections conducted as a result of their applications.

General Working Conditions of Minors Employed In Lake County Agricultural Packing Plants

Lake County is the home of five unified school districts, all of which include regular curriculum high schools, special continuing, and alternative education. In addition, the Lake County Office of Education operates four court/community school programs for grades 9 through 12. Pursuant to statistical enrollment data found on the Lake County Office of Education's website and the California Department of Education, the Lake County school enrollment for the 2009-10 school year was slightly lower than the 2008-09 school year. The enrollment of high school students in grades 9 through 12 for the 2009-10 school year, inclusive of all programs listed above, was 3,046 distributed as follows:

Kelseyville Unified School District – 566
Konocti Unified School District – 976
Lakeport Unified School District – 520

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Middletown Unified School District – 510
Upper Lake Union High School District – 422
Lake County Office of Education (court/community school programs) – 52

None of the Districts dismissed for summer vacation later than mid-June, 2010. The earliest date that the Labor Commissioner authorized any employer to begin extended work hours for a 16- or 17-year-old was July 5, 2010, with authority to continue until September 6, 2010. Reports provided by the packing plants receiving an exemption show that the earliest date minors worked more than 40 hours in a week was the week ending July 25, 2010. Classes for the 2010-11 school year resumed for high schools in Lake County on the following schedule:

Middletown High School	8/17/10
Upper Lake High School	8/19/10
Clear Lake High School (Lakeport Unified)	8/25/10
Lower Lake High School (Konocti Unified)	8/30/10
Kelseyville High School	9/7/10

Depending upon the starting date of the fall school session in their particular district, minors were expected to return to class at that designated time and the Office of Education no longer approved extended work hours. Reports provided by the employer receiving the exemption for both of its packing plant locations show that the latest date minors worked extended hours was the week ending September 5, 2010. No minor worked more than 60 hours in a week during the time frame allowing work for extended hours. However, upon inspection following the conclusion of the 2010 growing season, it was found that one minor worked without a valid work permit for this employer. (See Summary of Inspections below.)

According to the employer reports of weekly hours worked by minors during the 2010 peak packing season, the least amount of time worked by any minor during any one workweek was 5.25 hours, and the greatest number of hours worked by any minor during a single workweek was 59.25 hours.

Summary of Inspections Conducted Pursuant to Labor Code §1393.5

Prior to the beginning of peak pear packing season, DLSE conducted inspections of the one Lake County packing plant employers that applied for the exemption for excess hours worked by minors.

Application Inspection

On May 12, 2010, a DLSE deputy met with the managing member of the packing plant that had two facilities in Lake County, and inspected both facilities at which the minors would be working. In addition to packing their own fruit, the packing plants pack pears for about 40 growers. Although the plants were not in operation at either location at the time of the inspection, both facilities were clean and free from debris. The toilet and water facilities were operational. It was reported by the managing member that the facilities undergo a complete and thorough cleaning and organization prior to beginning operation.

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According to the information provided to the deputy, the proposed duties for minors were sorting, grading, quality testing, and weighing fruit in addition to assembling, labeling, packing and sorting of boxes, and cleanup. No minors are allowed to operate machinery and the employer reported providing safety training classes, including heat illness prevention training. The facilities conduct safety monitoring during production and make age-appropriate assignments for minors 16 and 17 years of age in compliance with both state and federal laws and regulations. To further ensure safety, no horseplay of any type is tolerated on the premises. All minors participate in an orientation process and are educated in health and safety procedures. In addition, the employer had set up procedures for all supervisors on how to monitor the employment of minors in accordance with the requirements of child labor laws. Supervisors are required to be able to identify minors working in their areas and time cards of minors are highlighted in yellow for easy identification. Breaks are scheduled.

The packing plant employer provided proof of workers' compensation coverage for all employees. In 2009, there were no injuries involving minors. Records were inspected including payroll records and permits for the prior packing season. In the prior 2009 season, 35 minors aged 16 and 17 were employed. All valid work permits were on file. The company complied with the permit issued for the 2009 season in that no minors aged 16 and 17 worked over 10 hours per day or over 60 hours per week. However, a review of the 2009 payroll records indicated that three minors had not been paid overtime wages and a citation was issued in the amount of \$162.43 (representing overtime wages earned and unpaid plus penalties). The citation was subsequently paid in full.

Recommendation was made to approve the applications for exemption for both facilities.

The Lake County Office of Education visited the packing facilities pursuant to Labor Code section 1393.5. Workstations were identified and work duties were reviewed. Based on the inspection, the Lake County Office of Education notified the Labor Commissioner by letter dated July 8, 2010 that it endorsed the employment of minors at both locations for this packing company.

Post-Season Inspection

Following the completion of the 2010 growing season, on October 26, 2010, a follow up inspection was conducted. A review of records pertaining to all minors employed during the 2010 season was completed. The majority of the minors attended Kelseyville High School which commenced instruction on September 7, 2010. One minor who turned 18 in July, 2010 and continued as a student Kelseyville High School, continued working past September 7 and missed three days of instruction in order to continue working. However, because he had turned 18, no violation was committed. Based on review of records, one minor worked the entire season without a valid work permit. During the 2010 season, all minors were paid at least the minimum wage of \$8.00 per hour. Packers were paid either a piece rate or an hourly wage and were paid the greater amount between the piece rate earned and the California mandated minimum wage rate.

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Based on the inspection, a citation was issued in the amount of \$1,000 for one violation of Labor Code section 1299 (lack of valid work permit). This was a second violation of the Labor Code section, the first violation occurring in the 2008 packing season. The citation was paid in full on October 29, 2010.

Workplace Injuries Involving Minors Employed by Agricultural Packing Plants

Statistical data summaries on workplace injuries are prepared by the Federal Bureau of Labor Statistics and the Division of Labor Statistics and Research for the state of California. However, these compiled statistics lack detailed industry segment, age-specific, and/or geographic location data that would identify minors that were involved in non-fatal work-related injuries in agricultural packing plants. At the time of inspections of all employers applying for exemption for the 2010 growing season statewide, none reported any injuries to minors during the 2009 season.

Labor Law and Regulation Violations in Agricultural Packing Plants

During 2010, DLSE received no complaints of labor law violations in agricultural packing plants specific to minors. Statistics are not available for the number of violations of labor laws and regulations that occurred at agricultural plants on a statewide basis. As noted above, while conducting its inspection to grant an exemption for the 2010 season, one violation of labor laws was found for one employer in Lake County to have occurred during the 2009 season. A citation was issued in the amount of \$162.45 for failure to pay overtime. Additionally, during a follow-up inspection at the completion of the 2010 growing season, one violation of Labor Code section 1299 for allowing a minor to begin work prior to securing a valid work permit was issued in the amount of \$1,000 as a second violation (the first having occurred in 2008).

Inspections were performed and applications for exemption approved for seven other packing plants statewide. No violations were found during inspections of these seven plants.

Respectfully submitted,

Denise Padres
Deputy Chief Labor Commissioner