

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF LABOR STANDARDS ENFORCEMENT

LEGAL SECTION

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DAVID GURLEY, *Staff Attorney*

February 25, 2003

James Ring
RDF Media
14900 Ventura Blvd. #310
Sherman Oaks, CA 91403

Re: Reality Television -- "The Swap"

Dear Mr. Ring,

This letter is written in response to your February 3, 2003, correspondence directed to Deputy Labor Commissioner, Theresa Brenner, whereby you seek clarification of California's child labor laws as they relate to a "reality" television program your company is currently producing. You describe "The Swap" as a show in which two families, including minors of various ages, will be videotaped for ten days. You indicate the families' routine will be kept as close to normal as possible. Your primary concern is whether California's labor laws regarding minors in the entertainment industry, would apply to minors in a "reality" based production.

You pose the following questions:

* Does the definition of this program as a "reality" show effect how minors will be covered, even if those involved are not "performers," (members of AFTRA and/or SAG)? There is not a script to be performed. The individuals are themselves following their normal routines.

Whether or not the production is described as a "reality" show is irrelevant to the analysis. Industrial Welfare Commission (IWC) Order 12 section 2 (L) regulating wages, hours and working conditions in the Motion Picture Industry defines "Motion Picture Industry" as

"any industry, business or establishment operated for the purpose of motion picture or television film production..."

Consequently, "The Swap" is governed under this regulation. The real question is whether RDF Media is acting as an employer, and whether the minors involved in "The Swap" are employees of RDF, thereby subjecting the minors to all of the various statutes and regulations governing the working conditions of minors in the entertainment industry.

Title 8 of the California Code of Regulations §11751(a) defines "the entertainment industry" as follows:

(a) The Entertainment Industry, hereinafter referred to as the employer, shall be

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defined as any organization, or individual, using the services of any minor in: Motion pictures of any type (e.g. film, videotape, etc.), using any format (theatrical film, commercial, documentary, television program, etc.) by any medium (e.g. theater, television, videocassette, etc.); photography; recording; modeling; theatrical productions; publicity; rodeos; circuses; musical performances; and any other performances where minors perform to entertain the public.

Again, "The Swap" as described in your letter falls within this definition and RDF Media would therefore be considered the employer of all of "The Swap's" participants.

Further, Section 2 (F) of the IWC Order defines "employer" as

"any person who directly or indirectly ... employs or exercises control over the wages, hours and working conditions of any person.

You indicate you will be shooting "for ten continuous days." As with any "reality" show, the participants - to a certain extent - will be subject to the direction and control of the director, producers and other crew members. The constant presence of cameras, lighting equipment, and crew etc., do not allow a child to conduct his/her "normal routine." While we understand the intent is to disrupt the minor's routine as little as possible, we are unable to discern how the constant presence of a camera crew could possibly achieve this goal. In short, the control of the directors and producers may not rise to the level of a typical situation-comedy, but would nevertheless exercise enough control to create an employer/employee relationship.

* How should we define Set, Work, School and R&R? For instance, when shooting a family in the context of their own lives, "reality", what is work? If a child is enjoying Rest & Relaxation and we videotape that, does it become work?

Again, we look to the Order to determine what is "work". IWC Order 12 section 2(H) defines "hours worked" as:

"the time during which a employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

Once again we are faced with whether or not the director and/or producers are controlling the participant and to what extent. We believe these questions may only be answered by an on set investigation. Without further details, we conclude that any time a participant is being filmed, they are subject to the control of the employer and therefore all filming time will be considered "hours worked". Of course, if a child is truly resting (i.e., sleeping), that time period would not considered hours worked.

* The videotaping will not be taking place on a traditional Sound Stage, like a Sit-Com, and it seems that much of the structure of Child Labor revolves around "Set Time." In this case the "Set" is the children's home, backyard, school, etc.

Whether or not the "set" is on a traditional "studio lot" or "on location" is also an insignificant distinction for application of laws governing minors in the entertainment industry. Wherever the participants are being filmed, is considered the "set."

* We are planning on shooting for ten continuous days, which would include two weekends. From my basic reading Children can only work six of seven days. Does this apply in this context?

I am unable to locate the law which you describe. But, it is important to remember that the laws created to safeguard children are interpreted broadly for their protection and the "reality" show format will not alter the requirements of the California Labor Code and its supporting regulations. In short, a child filmed in a "reality" based show is still subject to all of the rules and regulations governing minors in the entertainment industry.

* We need to define basic parameters:

Maximum work time/week (48 hours)?

Not before 5:00 AM?

No later than 10:00PM (preceding a School Day) and 12:30 AM (preceding a Non-school day)?

These minimum standards are found at Labor Code §1308.7 and are strictly enforced as expressed, whether or not the format is "reality" based.

* Once Work is defined in our case, we need to understand how it applies to documenting our participants. There will be a mixture of spontaneous activities on the part of the families and some preplanned events (e.g., dinner out, bowling, etc.) There will be multiple occasions throughout the day when it would be important to document activities (e.g., sharing household chores, making lunch, doing home work, etc.) Is this an instance where we need to define a Split Call/s and its application to cumulative Work Time?

Again, any time the minor is being filmed other than for bonafide rest periods, will be considered "hours worked". You indicate the minors will be attending their regular school. It is important to remember the Labor Commissioner has historically applied the following policy with respect to minors in the entertainment industry attending regular school:

Minors who attend regular school may not work in the entertainment industry for the same number of hours as minors tutored by studio teachers. Minors tutored by studio teachers need only be instructed for three hours a day [EC 48224; 8 CCR 11760] while minors in regular school are generally required to attend school for a much longer time. Clearly, minors who attend regular school cannot assume the same workhour burden as tutored minors. Consequently,

the Division of Labor Standards Enforcement adopted an enforcement policy for minors who attend regular school. This policy computes the length of the workday for minors who attend regular school by subtracting six hours from the maximum number of hours that tutored minors are permitted on set when school is in session. For example, tutored minors nine to 16 years of age are permitted to be on set for up to nine hours, therefore minors who attended regular school on a workday would be permitted to be on set for up to three hours. Such workdays for minors attending regular school do not require a one-hour rest and recreation period, but they may be extended one-half hour by a meal period. Finally, the Division of Labor Standards Enforcement's policy *always* assumes that the minor who attends regular school *always* attends for at least six hours. Thus, in an effort to safeguard the minor's educational interests, an artificially shortened regular schoolday is never allowed to result in an employer benefit of extended work hours.

Nothing in the Division of Labor Standards Enforcement's policy for minors who attend regular school may be construed to allow those minors to work during regular school hours. The Division of Labor Standards Enforcement's policy is specifically designed to dissuade any interruption of a minor's regular school attendance requirements. There is only one exception. A minor 14 years of age or older who attends regular school may work up to eight hours during regular school hours for each of two consecutive days upon the written permission of the minor's school [8 CCR 11760(h)].

Neither studio teachers nor the Labor Commissioner are empowered to waive—at any time or under any circumstances—any minimum labor standard established in law or regulation.
Exception: The special exemption allowing minors aged 8 to 18 to work past 10 p.m. up to 12 midnight on a school night.

* We are in the process of identifying families to participate. They vary in the number of children that they have and their ages. How will the ages of the children effect our documenting the families? Will they need a Work Permit and, if so, would it be a permit for the whole family?

The ages of the children involved will impact the time a child may be filmed. The specific hours a child may work are found at Title 8 of the California Code of Regulations §11760 and provide the maximum hours a child may be worked, and incorporate the number of schooling hours and rest periods a child is required to have. §11760 states in pertinent part:

Minors aged six months to two years may be at the place of employment for up to four hours, and may work up to two hours. The remaining time must be reserved for the minor's rest and recreation [8 CCR 11760].

Minors aged two years to six years may be at the place of employment for up to six hours, and may work up to three hours. The remaining time must be reserved for the minor's rest and recreation [8 CCR 11760].

Minors aged six years to nine years when school is in session may be at the place of

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employment for up to eight hours, the sum of four hours work, three hours schooling, and one hour of rest and recreation. When school is not in session, work time may be increased up to six hours, with one hour of rest and recreation [8 CCR 11760].

Minors aged nine years to 16 years when school is in session may be at the place of employment for up to nine hours, the sum of five hours work, three hours schooling, and one hour of rest and recreation. When school is not in session, work time may be increased up to seven hours, with one hour of rest and recreation [8 CCR 11760].

All minors aged six months to 16 years must be provided with one studio teacher for each group of 10 or fewer minors when school is in session, and for each group of 20 or fewer minors on Saturdays, Sundays, holidays, or during school vacations [8 CCR 11755.1]. In addition to the studio teacher, a parent or guardian must always be present [8 CCR 11757].

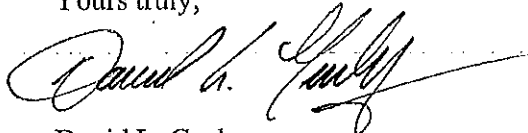
Minors aged 16 years to 18 years when school is in session may be at the place of employment for up to 10 hours, the sum of six hours work, three hours schooling, and one hour of rest and recreation. When school is not in session, work time may be increased up to eight hours, with one hour of rest and recreation [8 CCR 11760]. Studio teachers need only be present for the minors' schooling, if schooling is still required [8 CCR 11760]. A parent or guardian need not be present.

The time minors may be permitted at the place of employment may be extended by no more than one-half hour for a duty-free meal period [8 CCR 11761].

Moreover, each child will require work permits. The procedure for obtaining work permits can be found at 8 CCR §11753.

I hope this adequately answers your questions and we appreciate your interest in California's labor laws as they relate to minors in the entertainment industry. These answers are provided utilizing only the facts as provided within your correspondence. Should you wish to provide additional information or have further questions, please do not hesitate to contact me directly.

Yours truly,



David L. Gurley
Attorney for the Labor Commissioner

cc: Anne Stevason, Chief Counsel
Theresa A. Brenner, DLC I

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