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2007 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 exceptions 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 2007.

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

In 2007, pursuant to Labor Code §1393.5, applications were submitted by four Lake County employers for exemption to authorize employment of minors for more than 48 hours in any one week. The Labor Commissioner issued one exemption to an agricultural packing plant employer operating in two locations in Lake County and which had held a valid exemption in 2006. Two employers, one operating as a managing company for several growers, withdrew their applications, because after investigation, it was determined that the provisions of Labor Code §1393.5 did not apply to their operations because they did not operate packing plants in Lake County and instead contracted with outside companies to do their packing. One application was denied due to violations of various Labor Code requirements as described below.

Number of Minors Employed in the Agricultural Packing Plant Industry

According to reports of the Lake County agricultural packing plant employer operating with an approved exemption in 2007, a total of 55 minors aged 16- and 17- years old were employed by that employer during the 2007 peak packing season. An additional four minors 15 years of age were employed but were allowed only to work 8 hours per day up to 40 hours per week.

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 are 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. It is known, based upon inspection, that an additional 272 minors were employed in agricultural packing plants statewide.

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, alternative education, and court school campuses. 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 all grades was at its peak in the 2001-02 school year and has declined progressively since then. The 2006-07 enrollment of high school students in grades 9 through 12, inclusive of all programs listed above, was 3,415 and was distributed as follows:

Kelseyville Unified School District – 646
Konocti Unified School District – 1,023
Lakeport Unified School District – 576
Middletown Unified School District – 600
Upper Lake Union High School District – 472
Lake County Office of Education (court programs) – 98

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The last day that any of the Districts dismissed for summer vacation was June 15, 2007. 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, 2007, with authority to continue until September 3, 2007. Reports provided by the packing plant receiving an exemption show that the earliest date minors worked more than 40 hours in a week was the week ending July 15, 2007. One Lake County school district resumed instruction for the fall 2007 school session on August 27, 2007. The remaining school districts resumed classes on September 4, 2007. 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 packing plant receiving the exemption show that the latest date minors worked extended hours was the week ending August 26, 2007. No minor worked more than 60 hours in a week during the time frame allowing work for extended hours.

Eighty percent of the teens employed by the exempted Lake County agricultural packing plants worked for periods ranging from one week to six weeks during the packing season. Thirty-six (36) minors (sixteen 17-year olds; seventeen 16-year olds; and three 15-year olds) worked through the week ending September 2, 2007. Of those, four minors aged 17 worked 24, 12, 35 hours in the week ending September 2, 2007, one minor aged 16 worked 10.50 hours, one minor aged 15 worked 12.75 hours and the remainder worked a maximum of 8.50 hours. Only one minor aged 17 worked 4 hours during the week ending September 9, 2007.

According to the employer reports of weekly hours worked by minors during the 2007 peak packing season, the least amount of time worked by any minor during any one workweek was 1.25 hours, and the greatest number of hours worked by any minor during a single workweek was 60 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 four Lake County packing shed employers that applied for the exemption for excess hours worked by minors. On April 25, 2007, a DLSE deputy met with the managing member of the packing plant that had been previously granted an exemption, and inspected both Lake County facilities at which the minors would be working. According to the information provided to the deputy and based on records inspected, the proposed duties for minors were sorting, grading, quality testing, 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, conducting safety monitoring during production, and making age-appropriate assignments for minors 16 and 17 years of age in compliance with both state and federal laws and regulations. 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. The packing shed employer provided proof of workers' compensation coverage for all employees.

On April 26, 2007, a DLSE deputy met with the administrative manager of a managing company for several growers as well as a member of the LLC for the owner of a ranch. Upon investigation it was determined that Labor Code section 1393.5 did not apply to either the managing company or ranch because neither did any packing and instead contracted out to a

third party for packing. Based on this determination, the applications for exemption submitted by both entities were withdrawn. However, also based on facts determined at the time of investigation, the managing company with direct control of minors was found to be in violation of Industrial Welfare Commission (IWC) Wage Order 14 and child labor law violations, issued a Notice to Discontinue, and cited in the total amount of \$2,000 for violations of Labor Code sections 1299 and 1391. See Violations section, below, for itemization of violations found.

The fourth Lake County packing plant was inspected on April 25, 2007. As a result of various violations, a Notice to Discontinue and citations were issued for violations of Labor Code sections 1299, 1391, and 226(c) in the total amount of \$4,500 and the application for exemption was denied. See Violations section, below, for itemization of violations found.

Workplace Injuries Involving Minors Employed by Agricultural Packing Plants

Statistical data summaries on workplace injuries are prepared by the BLS 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. However, at the time of inspections of all employers applying for exemption for the 2007 growing season, none reported any injuries to minors during the 2006 season.

Labor Law and Regulation Violations in Agricultural Packing Plants

During 2007, 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. However, as discussed above, upon inspection of employers applying for exemption, eight citations were issued for violations of the following Labor Code sections and IWC Wage Orders:

- Labor Code sections 1299 and 1391
 - Minors working more than 10 hours/day or 60 hours/week
 - Minors working more than 4 hours/day on a school day
 - Minors working more than 8 hours/day on a non-school day, off peak
 - Minors under the age of 16 working more than 4 hours/day or 18 hours/week when school is in session
 - Minors aged 14-15 years working before 7 a.m.
 - Minors working without a valid work permit
- Labor Code section 226.3 – wage statements with incomplete information

Of the eight citations covering the Labor Code sections above:

- three citations were issued in Lake County for work hour violations;
- one citation for work hour violations was issued at a packing plant outside of Lake County;
- one citation was issued in Lake County for incomplete itemized wage statements;
- two citations were issued in Lake County for allowing minors to work without a valid work permit; and

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- one citation, for allowing minors to work without a valid work permit, was issued outside of Lake County.

In addition, Notices to Discontinue were issued requiring modification of practices concerning recordkeeping requirements, posting requirements, meal and rest periods, and work hours.

Respectfully submitted,

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State Labor Commissioner