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2009 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 2009.

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

In 2009, pursuant to Labor Code §1393.5, applications were submitted by two Lake County employers 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 two exemptions to agricultural packing plant employers operating in three locations in Lake County. Both of those employers held valid exemptions in 2008. No applications submitted by Lake County packing plants for the 2009 packing season were denied.

In addition to the two Lake County employers issued permits for exemption, nine packing operations outside of Lake County applied for exemption. Of those nine applications, six were approved and permits issued, one was voluntarily withdrawn prior to the processing of the application, and two were denied based upon inspection.

Number of Minors Employed in the Agricultural Packing Plant Industry

According to reports of the Lake County agricultural packing plant employers operating with an approved exemption in 2009, a total of 68 minors aged 16- and 17- years old were employed during the 2009 peak packing season. No minors aged 14- or 15- years old were employed.

The six additional packing operations with approved exemptions in 2009 employed an additional 107 minors under the provisions of these permits in agricultural packing plants statewide for the 2009 packing season.

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.

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 school campuses 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 2008-09 school year was slightly lower than the 2007-08 school year. The 2008-09 enrollment of high school students in grades 9 through 12, inclusive of all programs listed above, was 3,161 and was distributed as follows:

Kelseyville Unified School District – 572
Konocti Unified School District – 995
Lakeport Unified School District – 537
Middletown Unified School District – 572
Upper Lake Union High School District – 419

Lake County Office of Education (court programs) – 66

None of the Districts dismissed for summer vacation later than mid-June, 2009. The earliest date that the Labor Commissioner authorized any employer to begin extended work hours for a 16- or 17-year-old was July 6, 2009, with authority to continue until September 7, 2009. 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 13, 2009. One Lake County school district outside of the area of the packing plants receiving exemptions (Konocti Unified School District) resumed instruction for the Fall 2009 school session on August 31, 2009. The remaining school districts resumed classes on September 8, 2009. 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 plants receiving the exemption show that the latest date minors worked extended hours was the week ending August 29, 2008. 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 2009 growing season, it was found that four minors worked more than the allowed 10 hours per day. (See Summary of Inspections below)

According to the employer reports of weekly hours worked by minors during the 2009 peak packing season, the least amount of time worked by any minor during any one workweek was 2 hours, and the greatest number of hours worked by any minor during a single workweek was 58.50 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 two Lake County packing plant employers that applied for the exemption for excess hours worked by minors.

Employer One

On May 26, 2009, 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 plant packs pears for about 40 growers. Although the plant was not in operation at either location at the time of the inspection and not safe or organized, it was reported by the managing member that the facilities undergo a complete and thorough cleaning and organization prior to beginning operation. In support of this statement, the managing member presented a copy of an inspection report prepared by an independent third party performed during the 2008 packing season which evidenced the packing plant received high marks for cleanliness, organization, and safety. A follow up discussion with the managing member on June 22, 2009 indicated that water had been turned on and the plants organized. The managing member agreed to and did provide a declaration and pictures attesting to the facilities' readiness for operation prior to commencing packing activities.

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. In addition, the employer had set up

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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 2008, there were no injuries involving minors. Records were inspected including payroll records and permits for the prior packing season. In the prior 2008 season, 48 minors aged 16 and 17 were employed. All valid work permits were on file. One violation was noted for beginning work prior to obtaining a permit and citation in the amount of \$500 was issued. The company indicated the citation would be paid immediately. The company complied with the permit issued for the 2008 season in that no minors aged 16 and 17 worked over 10 hours per day or over 60 hours per week. Recommendation was made to approve the applications for exemption for both facilities.

Employer Two

On May 28, 2009 a DLSE deputy met with the controller of the second packing plant employer applying for exemption in Lake County. This plant operated under a valid permit for exemption in 2008 and employed 3 minors aged 16 and 17 and no minors aged 14 or 15 in the 2008 season. A review of the payroll and time records indicated that no minor worked over 10 hours per day or 60 hours per week. The review of records, however, did indicate that there was a problem with time keeping. The packing plant has three time clocks in three different locations. One of the three clocks recorded time in different time increments making the record keeping inconsistent for all employees. The company was unaware of the discrepancy and agreed to fix the problem and agreed to report to the DLSE deputy the actions taken. It was later reported that adjustments were made so that all time clocks are consistent in how time is recorded.

The deputy was informed and verified by records that the proposed duties of the minors would be sorting, packing, weighing, stacking, clerical, cleaning, and miscellaneous labor. All minors are supervised and no minors would be allowed to operate machinery or to be in the vicinity of the pear dumping area. All employees, including minors, received safety training, including heat illness prevention. All employees are provided with a shaded area for rest and meal periods and are provided with drinking fountains. The USDA conducted an inspection of the facility in July 2008 which was provided to the DLSE deputy and which indicated that the facility was clean and safe during the 2008 packing season. There were no injuries involving minors in 2008. The packing plant employer provided proof of workers' compensation coverage for all employees. No violations of labor laws were found and recommendation was made to approve the application for exemption for the 2009 season.

Upon receipt of employer time records from Employer Two at the conclusion of the 2009 season, discrepancies in time records were noted. As a result, an inspection was requested and performed on October 23, 2009 to verify compliance with Labor Code sections 1391 and 1393 during the 2009 season. Upon interviews with the packing plant's controller and office manager, and after reviewing time records and pay information, it was determined that information previously submitted as its minor labor report for the 2009 packing season was inaccurate in that it combined pay periods and pay period ending dates were not accurate. Time cards for all minors were reviewed by the deputy and indicated that all work was performed within the dates listed on the Permit for Extension of Minors' Work Hours. However, a review of the time records indicated that four minors worked beyond 10 hours per day during the week ending August 29, 2009. It was

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concluded that clock-in and clock-out times represented true and accurate start and stop times and that all minors were paid accurately according to recorded times. A review was also conducted of each minor's permit compared against the minor's hire and termination dates. It was determined from this review that one minor did not have a work permit and five minors started work prior to having a permit. As a result of this inspection, the packing plant was issued citations in the amount of \$6,000 for violation of Labor Code section 1299 (lack of valid work permit) and \$4,000 for violation of Labor Code sections 1391 and 1393 (hours). Because this packing plant's Application for Permit was denied in 2007 on the basis of the same types of violations, both citations were issued in the amount of \$1,000 per occurrence as a second violation. The exemption for this packing plant expired as of September 4, 2009 and based on the violations found, it will not be eligible for exemption for the 2010 packing season should it choose to apply.

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 2009 growing season, none reported any injuries to minors during the 2008 season.

Labor Law and Regulation Violations in Agricultural Packing Plants

During 2009, 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 2009 season, one violation of labor laws was found for one employer in Lake County to have occurred during the 2008 season. A citation was issued in the amount of \$500 for violation of Labor Code section 1299 for allowing a minor to begin work prior to securing a valid work permit. Additionally, following the conclusion of the 2009 season, citations were issued in the amount of \$6,000 for violation of Labor Code section 1299 (lack of valid work permit) and \$4,000 for violation of Labor Code sections 1391 and 1393 (hours), both citations representing the maximum amount as a second violation.

Inspections were performed and applications for exemption approved for six other packing plants statewide. In one of those inspections, a Notice to Discontinue was issued to correct two very minor violations of allowing minors to work in excess of hours permitted (in one case, the minor worked 20 minutes over the authorized hours in one day over the entire packing season; in another case a minor worked a total of 38 minutes over the authorized hours spread over a one week period). Because of the minor nature of the violations and the employer's history of employing at least 20 minors per year since 1999 with no violations, no citations were issued and action was taken immediately by the employer to ensure compliance.

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Two applications for exemption outside of Lake County were denied due to violations of labor law found during the inspection process. Citations for these two applicants were issued in the total amount of \$1,500 for violation of Labor Code section 1391 (minors worked more than authorized hours).

Respectfully submitted,

Angela Bradstreet
State Labor Commissioner