

NLWJC - Kagan

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Labor - Amish Bill

DRAFT 07/21/98 3:22 PM

The Honorable William F. Goodling
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodling:

I understand that the Committee on Education and the Workforce will soon consider H.R. 4257, which would allow certain youths as young as 14 years of age to work in industries that process wood products (including sawmills) if they are members of a religious sect whose teachings do not permit formal education beyond the eight grade. The Department has serious concerns about the bill as drafted. We look forward to an opportunity to consider, with the Committee, how we might best achieve the objective of accommodating the goals of the Amish, consistent with a need to protect children's safety and health.]

The bill is designed to address the concerns of Amish families whose faith prescribes that children complete their formal education at age 14 and work alongside other members of their community. As farm land becomes scarcer, working alongside their families increasingly means working but in non-farm occupations, including lumber and wood processing, to which the Amish are turning to support their families and sustain their communities.

Currently, under the Fair Labor Standards Act's child labor provisions, minors under the age of 16 are prohibited from working in manufacturing operations, including sawmills. In addition, the Act gives the Secretary of Labor the authority to prohibit the employment of minors under 18 years of age in occupations or industries found and declared by the Secretary of Labor to be particularly hazardous or detrimental to their well-being. Hazardous Occupations Order No. 4 (HO 4) specifically prohibits youth under the age of 18 from working in sawmill operations and the logging industry. Hazardous Occupations Order No. 5 (HO 5) specifically prohibits such youth from operating power-driven wood-working machines.

Injury data collected over several decades consistently show that the lumber and wood product industry is particularly hazardous work for adults, let alone children. The 1996 occupational fatality rate of 25.6 work-related deaths per 100,000 workers was more than five times the national average "all private industry" rate of 5.1 per 100,000 workers and had actually increased over the 1995 rate. The frequency of all non-fatal injuries was almost twice as high in the lumber and wood products industry (14.2 per 100 full-time workers) as the national average for all industries (7.4 for every 100 workers). Even for those workers who do not operate power-driven equipment, sawmills present significant occupational risks. The

Occupational and Safety Administration has documented examples of workers who were crushed by falling loads, run over by front-end loaders, and injured from rolling logs.

These dangers are exacerbated for youth. Their limited experience in any workplace, let alone a highly hazardous one; lack of training; and immaturity make them significantly more prone to errors in judgement. Judgement errors and their smaller size increase the odds that children will experience serious injury or even death in the workplace.

For these reasons, the Department of Labor is concerned about a broad exemption from child labor laws for children in workplaces where machinery is used to process wood products, even though the bill would require the presence of a supervisory adult and prohibit the young workers from operating or assisting in the operation of power-driven woodworking machines. Adult presence in the workplace will not be able to protect children from the split-second mistake that could cost them a hand, finger, or worse. Presence in the workplace even at a distance from the machinery puts children at risk from forklifts, flying debris, choking sawdust, deafening noise, and vibration. While we are sensitive to the important cultural and religious traditions of the Amish and similar American communities, we should balance that sensitivity against our concern for the safety and welfare of children and insure that there is no less hazardous way of facilitating the cultural values that the Amish seek to preserve.

In addition, we have a number of specific concerns with the language of the bill. First, we have been advised that the Department of Justice has serious concerns about the constitutionality of the proposed legislation as drafted. Second, the bill as drafted is not limited to workplaces in which the Amish children work alongside other members of their community, but instead provides exemptions from the child labor laws for these children to work in any workplace. Third, we are concerned that this legislation would be followed by requests to open up other hazardous workplaces to children.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration.

Sincerely,

Kathryn O. Higgins

Message Sent To:

Labor - Amish Bill

DRAFT 07/20/98 4:22 PM

The Honorable William F. Goodling
Chairman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Goodling:

I understand that the Committee on Education and the Workforce will soon consider H.R. 4257 which would allow certain youths as young as 14 years of age to work in industries that process wood products (including sawmills) depending on their particular religious affiliation. I am writing to provide you with the views of the Department of Labor on this legislation.

Under the Fair Labor Standards Act's child labor provisions, minors under the age of 16 are prohibited from working in manufacturing operations, including sawmills. Hazardous Occupations Order No. 4 (HO 4) specifically prohibits youth under the age of 18 from working in sawmill operations and the logging industry. Hazardous Occupations Order No. 5 (HO 5) specifically prohibits such youth from operating power-driven wood-working machines.¹ The proposed legislation will provide an exception from those child labor restrictions for boys and girls between the ages of 14 and 18 who are members of any religious sect or division that precludes formal education beyond the eighth grade. Under this bill, children would be allowed to work anywhere inside a sawmill or other woodworking establishment if an adult supervisor is present as long as the young workers do not personally operate or assist in the operation of power-driven woodworking machines.

The Department of Labor opposes H.R. 4257 because it would allow young children to work in hazardous woodworking and sawmilling occupations and because it would create special rules for members of certain religious persuasions. The lumber and wood products industry, which includes sawmills, is extremely dangerous. The 1996 occupational fatality rate of 25.6 work-related deaths per 100,000 workers was more than five times the national average "all private industry" rate of 5.1 per 100,000 workers and, had actually increased over the 1995 rate. The frequency of all non-fatal injuries was almost twice as high in the lumber and wood products industry (14.2 per 100 full-time workers) as the national average for all industries (7.4 for every 100 workers). Even for those workers who do not operate power-driven equipment, sawmills present significant occupational risks. The Occupational and Safety Administration has

¹ HO 4 and HO 5 stem from the Department of Labor's statutory charge to prohibit the employment of minors under 18 years of age in occupations or industries found and declared by the Secretary of Labor to be particularly hazardous or detrimental to their health and well-being. Injury data collected over several decades consistently show that sawmills are particularly hazardous workplaces for adults, let alone children.

documented examples of workers who were suffocated by saw dust; crushed by falling loads; run over by front-end loaders and injured from rolling logs.

The Department also objects to special treatment under the child labor laws for members of designated religious orders because it provides unfair competitive advantages for some employers. Unlike other employers, employers of the same religious community as the excepted youths (including family-owned or religious-affiliated businesses) would be in a better position to avail themselves of a ready supply of teenage workers who need only be paid at the youth subminimum wage of \$4.25 for their first 90 days of employment. Similarly, employers located in geographic areas that have large populations of youth in the designated religious sect – and therefore an available labor pool – would also enjoy an unfair competitive advantage over their competitors in other parts of the county. Young members of qualifying religious sects would themselves have a hiring advantage over other workers and could displace entry-level adults who, unlike the youths, must be compensated at the full minimum wage.

The Secretary of Labor is charged with protecting the safety and health of working children without regard to their religious beliefs, ethnic origin, or cultural heritage. The Department believes that work experience can be beneficial for young people, but the work must be safe. This proposed legislation would allow inexperienced children to be employed in work environments that are recognized as some of the most dangerous in America. We have been advised, as well, that the Department of Justice has serious concerns about the constitutionality of the proposed legislation as drafted. If the legislation passes, we would urge the President to veto it.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration.

Sincerely,

Kathryn O. Higgins

▶ Julie A. Fernandes
07/21/98 11:26:26 AM
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Record Type: Record

To: Elena Kagan/OPD/EOP
cc:
Subject: FLSA and the Amish

Elena,

I dropped off some materials on this with Laura. In brief, there is a bill in the House (introduced by Rep. Pitts) that would give an exemption from the Fair Labor Standards Act to sawmill employers who employ children (under 18) who are, because of religious affiliation, exempted from mandatory education beyond the 8th grade (i.e., the Amish). The reason for this legislation is that the Amish have moved from farming to sawmills and want to continue to employ their kids. According to Labor, sawmills are very dangerous places (though, interestingly, no more dangerous than farms -- but farms have a longstanding (1938) exemption from FLSA). The FLSA prohibits kids under 16 from working in manufacturing operations, including sawmills. Also, kids under 18 are prohibited from working in sawmill operations and from operating power-driven wood-working machines.

Labor wants to write a letter opposing the legislation (with a veto threat). OLC thinks that the legislation might be unconstitutional b/c it is so sect specific, but that a broader piece of legislation (articulating a more general accomodation) would likely survive constitutional scrutiny. No one seems to think that the accomodation is compelled under RFRA.

I brought this up at the team leaders this am. Bruce's instinct was that the letter should not include a veto threat and should indicate that though this legislation could be constitutionally problematic as drafted, there is room to accomodate the Amish within constitutional bounds.

The bill is scheduled to be marked-up tomorrow in the Educ. and Workforce committee. Though we have not concluded on the legal points, Labor wants us to sent a letter in order to signal the Democrats on where we are.

julie