



TLF Brief: Understanding Growing Child Labor Risks in the US

October 18, 2023

Introduction

A number of recent journalistic exposés¹, and a new US Department of Labor (DOL) investigation², have recently revealed widespread use of underage child workers in a number of industries in the US. Additionally, the DOL has recently cited a 69 percent increase in findings of illegal child labor between 2018 and 2022 as a cause for increased enforcement efforts.³ This recent news has created understandable concern among investors, both for the unethical nature of employing young people in hazardous jobs, and for the potential reputational and legal risk this creates for workers' retirement funds⁴⁵.

Given that most child labor laws were enacted in the US almost a century ago (the Fair Labor Standards Act was passed in 1938), many people assume that the risk of child labor domestically is quite low. Unfortunately, recent events indicate that investors cannot take for granted that child labor laws are being followed or adequately enforced in the US, or that

¹ "The Kids on the Night Shift", New York Times, September 18, 2023

<https://www.nytimes.com/2023/09/18/magazine/child-labor-dangerous-jobs.html>

² "More Than 100 Children Illegally Employed in Hazardous Jobs, Federal Investigation Finds; Food Sanitation Contractor Pays \$1.5 M in Penalties", Department of Labor News Release, February 17, 2023
<https://www.dol.gov/newsroom/releases/whd/whd20230217-1>

³ "Department of Labor, Interagency Task Force Announce Recent Actions to Combat Exploitative Child Labor with New Partnerships, Tactics, Ramped up Enforcement", Department of Labor News Release, July 27, 2023 <https://www.dol.gov/newsroom/releases/osec/osec20230727>

⁴ "A Slaughterhouse Cleaning Company that Used More than 100 Children as Workers Keeps Losing Contracts with Big Companies", Fortune, May 1, 2023
<https://fortune.com/2023/05/01/slaughterhouse-cleaning-company-child-labor-losing-contracts-packers-sanitation-services/>

⁵ "Federal Court Orders a Subway Franchisee to Close or Sell Their Restaurants", Restaurant Business, October 2, 2023
<https://www.restaurantbusinessonline.com/operations/federal-court-orders-subway-franchisee-close-or-sell-their-restaurants>

companies, especially in certain industries, are performing the necessary oversight, especially of sub-contractors and franchises, to protect children from being seriously injured or killed in the workplace. There are a number of factors that have led to the current increase, and investors have a few different tools they can employ at this time.

The Current Context

Employment of child workers in hazardous and late night jobs has been well documented over the past year, especially in three industries:

- **Fast Food:** McDonald's⁶, Arby's⁷, Popeyes⁸
- **Automotive:** Hyundai⁹
- **Meat-Packing:** Purdue, Tyson¹⁰

The recent increase in child labor in the US appears to be related to a few key factors:

- **An increase in unaccompanied minors migrating to the US without adequate social protections.**¹¹ The International Labor Organization (ILO)¹² has reported that migrant children are more at risk than other children to be employed illegally.¹³
- **US labor laws are not providing adequate protection.** While the Biden administration has recently announced increased enforcement of federal labor laws, specifically child

⁶ Over 300 Minors Found Working at 3 McDonald's Franchisees: Department of Labor, ABC News, May 3, 2023

<https://abcnews.go.com/US/minors-found-working-mcdonalds-franchisees-labor-department/story?id=99053558>

McDonald's Child Labor Audit Demanded by Some Shareholder Groups, Washington Post, June 23, 2023

<https://www.washingtonpost.com/business/2023/06/23/mcdonalds-child-labor-shareholders/>

⁷ Arby's Penalized for Allowing Upstate Minors to Work More Than Federally Allowed, 7 News, January 5, 2023

<https://www.wspa.com/news/local-news/arbys-penalized-for-allowing-upstate-minors-to-work-more-than-federally-allowed/>

⁸ Child Labor Violations are on the Rise as Some States Look to Loosen Their Rules, NPR, February 26, 2023

<https://www.npr.org/2023/02/26/1157368469/child-labor-violations-increase-states-loosen-rules>

Oakland Popeyes Shuts Down After Teens Claim Child Labor Violations, Unsafe Work Conditions, 7 News, May 18, 2023

<https://abc7news.com/oakland-popeyes-closed-child-labor-assault-70th-and-international/13266566/>

⁹ Child Workers Found Throughout Hyundai-Kia Supply Chain in Alabama, Reuters, December 16, 2022

<https://www.reuters.com/investigates/special-report/usa-immigration-hyundai/>

¹⁰ The Kids on the Night Shift, New York Times, September 18, 2023

<https://www.nytimes.com/2023/09/18/magazine/child-labor-dangerous-jobs.html>

Tyson and Perdue are Facing Child Labor Investigations, New York Times, September 23, 2023

<https://www.nytimes.com/2023/09/23/us/tyson-perdue-child-labor.html?searchResultPosition=1>

¹¹ Searching for the Faces of Migrant Child Labor, New York Times, March 3, 2023

<https://www.nytimes.com/2023/03/03/insider/searching-for-the-faces-of-child-migrant-labor.html?searchResultPosition=4>

¹² Child Labour Website, International Labour Organization, accessed October 17, 2023

<https://www.ilo.org/global/topics/child-labour/lang--en/index.htm>

¹³ Webinar: "The Resurgence of Child Labor and the Rights of the Child in the United States", Harvard Law School Human Rights Program, October 17, 2023 - recording not available as of this date (YouTube)

labor laws, the agencies are understaffed and underfunded, leading to weak enforcement. Penalties are also inadequate to provide widespread deterrence. Weak US labor laws have also led to fewer unionized workplaces. Unions act as monitors in the workplace and a decrease in labor law violations.¹⁴

- **A coordinated political effort to roll back child labor laws at the state level.** “In the past 2 years, at least 10 states have introduced or passed laws rolling back child labor protections.”¹⁵

How Investors Are Taking Action

In order to avoid child labor risk, pension funds:

- Need active and enforceable **investment policies** that provide guidance to trustees, consultants, asset managers, and staff, on labor standards in their portfolio companies and all subcontractors or franchises. This includes adopting or updating Responsible Contractor Policies and [Private Equity Principles](#).
- Need to **actively engage with companies**, especially in high risk industries. This can include asking for data directly from companies and performing due diligence on health, safety and child labor law compliance.
- Need to **be involved actively in the shareholder process**. This includes knowing how your fund is voting its shares and advocating for more transparency by supporting shareholder resolutions for [Human Rights Assessments and third-party audits](#).
- Finally, there are a number of **legislative and policy solutions** that also need support to change the larger structural and legal environment. As investors engage with companies or consider policy, keep in mind these types of measures that can decrease child labor at the local, state, or country level:
 - Increased penalties for violations of labor law, and improved staffing and funding of enforcement agencies.
 - States can pass stronger labor laws than the federal law (no FLSA preemption).
 - Strengthen the rights of workers to form unions.
 - Decrease child poverty and increase social protections for children.

Conclusion

With a marked increase in child labor in the US at this current moment, it is especially important for investors to take action to ensure the companies in their portfolios are not exposing their funds to legal and reputational risk by employing child workers in hazardous conditions.

¹⁴ Ibid

¹⁵ “Child Labor Laws are Under Attack in States Across the Country”, Jennifer Sherer and Nina Mast, Economic Policy Institute, March 14, 2023 <https://www.epi.org/publication/child-labor-laws-under-attack/>