

## Senator Hirono Questions

### **Role of Unions in Preventing Child Exploitation**

Some people who see child labor violations do not report them because they fear that their employers will retaliate. This chilling effect is worse for immigrant workers, who are less likely to report violations because of language barriers, unfamiliarity with the law and potential immigration consequences.

#### QUESTIONS:

1. Many companies with child labor violations aren't unionized. What role do you believe unions play in ensuring that child labor violations are reported and children are protected?

**Response:** *Unions, through collective bargaining agreements (CBAs), promote transparency and fairness in employment terms and conditions and include mutually agreed-upon processes to resolve workplace issues. Workers represented by unions often feel more secure in voicing concerns about potential violations of worker protections, including unlawful child labor. This may lead to faster resolution of concerns and may improve employer compliance with the law and with the terms of the CBA. Data from several studies that considered specific industries found that union worksites were less likely to have health and safety violations than nonunion worksites. Union representation and Labor-Management Partnerships can lead to improved health, safety, wages, and working conditions for workers and improved employer compliance with labor laws, including child labor laws.*

2. Would legislation like S. 567, the PRO Act, help combat child labor? Would community benefits agreements that include protections for workers' rights combat child labor?

**Response:** *The Protecting the Right to Organize (PRO) Act (S. 567), if enacted, would enhance the power of workers to organize and collectively bargain for better wages, benefits and working conditions. Because the use of CBAs may support the ability of workers to raise workplace concerns, facilitate the resolution of concerns and improve employer compliance with labor laws, legislation that facilitates or expands the use of CBAs could help prevent unlawful child labor and improve employer compliance with labor laws, including child labor laws.*

*Similarly, community benefits agreements – contracts between community organizations and businesses for the purpose of negotiating a business's commitments to the community – may support the ability of workers to raise workplace concerns, facilitate the resolution of concerns and improve employer compliance with labor laws, including child labor laws. A community benefits agreement may, for example, require a company to disclose hiring practices to the local community, provide training on child labor laws to subcontractors, or invest in the education of workers on laws that apply to them by contracting with local, culturally competent organizations to provide worker education.*

### **Subcontractors to Avoid Accountability**

Child labor violations often occur in facilities owned by large corporations that subcontract their work to smaller staffing companies.

#### **QUESTIONS:**

1. How is the Department of Labor addressing this multi-chain organizational structure in its investigations of child labor violations?

**Response:** *The Department often sees companies that have complex arrangements with staffing companies that directly employ certain workers and other types of subcontractors. The Department is committed to holding all employers accountable for employing children in violation of the law. In its enforcement efforts, the Department considers how best to use investigations and litigation to improve child labor practices throughout an employer's business and up and down supply chains. Employers, for example, have entered into consent agreements requiring training on child labor obligations for their own employees as well as suppliers.*

2. Has the department's enforcement ability been hindered by these structures?

**Response:** *Child labor investigations can be highly resource-intensive, in part because of the complex corporate structures we encounter. Our child labor investigations often require the Department to act quickly, especially where minors may be in physical danger. Thus, the Department must often quickly gather evidence and work to understand not just the nature of child labor violations but also the complex corporate structures involved in each case in order to hold all appropriate entities and individuals accountable. And, more broadly, in child labor investigations, the Wage and Hour Division (WHD) and the Office of the Solicitor of Labor work together to use a wide range of tools and strategies to protect minors and hold companies accountable. Our work in the Solicitor's Office involves, for example, developing and obtaining warrants and subpoenas, supporting and defending WHD's civil money penalty assessments, supporting WHD's enforcement of the Fair Labor Standards Act's "hot goods" provision to stop the shipment of goods produced in violation of child labor laws in commerce, seeking temporary and permanent injunctions, negotiating meaningful agreements to stop future child labor violations, and more. The Department's child labor enforcement efforts often require quick action, along with a significant investment of time and strategic use of limited resources. At each stage of the Department's enforcement, companies' complex structures add a layer of complexity and challenges.*

3. What authorities or funding would best enhance the department's ability to hold large corporations accountable for these egregious violations?

**Response:** *Additional funding to WHD and the Office of the Solicitor would greatly enhance the Department's ability to hold large employers accountable. The Department of Labor is calling on Congress to grant the President's supplemental funding request of \$100 million, \$50 million each for WHD and the Office of the Solicitor, to investigate child labor cases and bring critical*

*enforcement actions. Between 2010 and 2019, WHD lost 15 percent of its full-time employees funded by its annual appropriation because it was nearly flat-funded during this period. And the Office of the Solicitor has essentially been flat-funded in its annual appropriation since fiscal year (FY) 2010, resulting in the loss of more than 100 staff from the peak, a 17 percent decline, as costs have increased. With modest funding increases over the last few years, American Rescue Plan funding for COVID-related investigations, and a strong focus on hiring during the Biden-Harris Administration, the Department had begun to increase its staffing levels. But it still has not received sufficient resources to allow the Department to fully rebuild its staff and enforcement capacity. And this supplemental funding has now expired, resulting in a critical funding need.*

*The maximum civil money penalty under current law for a child labor violation that does not cause a child's serious injury or death is \$15,138 per violation. That is not high enough to be a deterrent for major profitable companies. The Department is calling on Congress to increase civil monetary penalties, strengthen protections from retaliation for people who report child labor law violations, and ensure that the Department has adequate resources to investigate and hold accountable businesses flouting child labor laws.*

*Combating unlawful child labor and ensuring that work for minors is safe and age-appropriate, and does not jeopardize their health, well-being, or education requires a whole-of-government approach, along with a commitment from businesses and the communities in which they operate.*

*The Department appreciates Congressional interest in addressing unlawful child labor and supporting the Department's enforcement efforts. The Department stands ready to assist Congress in considering the important proposals under consideration.*

### **Inadequacy of Current Penalties**

This hearing on child labor violations highlighted challenges in holding employers accountable in a way that incentivizes corporate behavioral change. In particular, the civil penalty for a child labor violation of \$15,138 offers little incentive for any company that is profiting off this exploitation. While the Department of Labor has increased its assessment of penalties by 87% in the last fiscal year, enforcement under current authorities is clearly insufficient.

#### **QUESTIONS:**

1. In addition to increasing the maximum penalty for these violations, how else could the DOL better hold these companies accountable?

***Response:*** *The Department is calling on Congress to increase civil monetary penalties, strengthen protections from retaliation for people who report child labor law violations and increase funding for the Department to investigate and bring enforcement actions against corporations violating child labor laws. The Department believes that stronger penalties will hold employers accountable for those violations and deter future violations. Further, the Department has called on Congress to increase funding for the Department's labor enforcement agencies to allow the Department to expand its important work enforcing federal child labor*

*laws. Specifically, the Department is calling on Congress to grant the President’s supplemental funding request of \$100 million, \$50 million each for the Wage and Hour Division and the Office of the Solicitor of Labor, to investigate child labor cases and bring critical enforcement actions. Between 2010 and 2019, the Wage and Hour Division lost 15 percent of its full-time employees funded by its annual appropriation because it was nearly flat-funded during this period. And the Office of the Solicitor has essentially been flat-funded in its annual appropriation since FY 2010, resulting in the loss of more than 100 staff from the peak, a 17 percent decline, as costs have increased. With modest funding increases over the last few years, American Rescue Plan funding for COVID-related investigations and a strong focus on hiring during the Biden-Harris Administration, the Department had begun to increase its staffing levels. But it still has not received sufficient resources to allow the Department to fully rebuild its staff and enforcement capacity. And this supplemental funding has now expired, resulting in a critical funding need.*

*The Department is aware that there are many legislative proposals seeking to address unlawful child labor and is happy to provide technical assistance on Congressional legislation. The Department recognizes the important role of Congress in strengthening laws to prevent and address unlawful child labor to improve the health, welfare and educational attainment of children nationwide.*

2. How is the department structuring its enforcement so that employees are not suffering the effects?

***Response:*** *The Department’s Wage and Hour Division’s (WHD) mission is to promote and achieve compliance with labor standards to protect and enhance the welfare of the nation’s workforce. WHD administers and enforces some of the most fundamental federal labor protection laws, including federal minimum wage, overtime pay, recordkeeping and child labor requirements of the Fair Labor Standards Act.*

*WHD provides numerous resources to workers, advocates, and employers to provide greater clarity about the investigation process. This includes ensuring that workers understand that WHD services are free and confidential and that both workers and employers understand that workers are protected against retaliation for filing a complaint with WHD or participating in a WHD investigation. WHD, working with the Office of the Solicitor of Labor (SOL), considers all remedies and sanctions available to protect workers and ensure employer compliance, including injunctive relief, compensatory damages and make-whole relief, such as lost wages and all economic losses that resulted from the retaliatory conduct, and punitive damages where appropriate.*

*In the case of child labor violations, the Department works in partnership with other federal, state and local worker protection agencies, as well as with worker advocates, community-based organizations and service providers to ensure that when employers are held accountable for employing children in violation of the law, the children and other workers are also provided with resources to ensure that they are protected from retaliation and to receive the supports they need.*

3. Fines assessed and paid by the employers that are not tied specifically to back wages revert to Treasury. A child found working in a dangerous workplace doesn't see any amount from the penalty. Would dedicating this money to either the child or to the Department of Labor for use in further investigations better comprehensively address this problem?

**Response:** *Civil monetary penalties for child labor violations revert to the Treasury and are not retained by the Department, unlike the civil money penalties for minimum wage or overtime violations under the FLSA. Aligning those policies so as to dedicate child labor penalties to the Department could provide vital additional resources to the Department to expand its enforcement of federal child labor laws. In addition, workers who experience other types of violations under the FLSA are able to seek redress in the courts, but victims of child labor violations rely on the Department for enforcement of federal child labor protections because there is no private right of action for FLSA child labor violations. The Department stands ready to provide technical assistance to Congress regarding this and other potential legislative proposals.*

**Sen. Graham:**

1. Is it the policy of DOL to notify federal law enforcement, state law enforcement, HHS, and/or social services when UAC or minors are identified in DOL civil investigations?

**Response:** *Protecting vulnerable workers, including immigrant workers, is a key part of the Department's mission and its work to address illegal child labor. Under the law, workers are entitled to the protections of the Fair Labor Standards Act's child labor provisions regardless of their immigration status or country of origin.*

*As part of the Department's National Strategic Enforcement Initiative on Child Labor, the Department's Wage and Hour Division (WHD) uses worker-focused strategies to initiate investigations where child labor violations are most likely to occur. The Department's WHD and the Office of the Solicitor use all available enforcement tools, including penalties, court injunctions, use of the "hot goods" provision of the Fair Labor Standards Act to stop the movement of goods made with child labor, and criminal referrals where warranted.*

*The Department's WHD investigators are trained to remain alert to any indicators of possible human trafficking, exploitation, or coercion. This includes specialized training and guidance for WHD staff on the trafficking of children. When human trafficking indicators are detected, the Department makes a referral to appropriate federal, state, and/or local law enforcement agencies or taskforces, including the Department of Justice's Human Trafficking Prosecution Unit, and to the Department of Health and Human Services (HHS) Administration for Children and Families (ACF) Office on Trafficking in Persons (OTIP).*

*On March 23, 2023, the Department's WHD and the HHS ACF entered into a [Memorandum of Agreement](#) to advance ongoing efforts to address child labor exploitation. The agreement formalized the partnership between the agencies and outlined procedures to be followed by both*

agencies in working together to address the need for deeper information sharing<sup>1</sup>, coordination, training, and education.

*The Department's WHD has a longstanding and established process to engage with community-based organizations, consulates, and federal partners that can assist in our efforts to address illegal child labor, including providing services to young people who are victims of exploitative child labor. The Department makes every effort to bring these resources together for children and families who are the victims of being unlawfully employed by these employers.*

2. In April 2023, Department of Agriculture Secretary Tom Vilsack stated, "In the last fiscal year, the [DOL] found 835 companies it investigated had employed more than 3,800 children."
  - a. How many of those 3,800 children were UAC?
  - b. How many were in immigration proceedings?
  - c. How many of those investigations were criminal/civil/joint criminal and civil?
  - d. What were the criminal and civil penalties imposed?
  - e. Into what account are civil fines imposed by DOL for child labor violations directed and do child victims of these kinds of violations have access to these funds?

**Response:** *Protecting vulnerable workers is a key part of the Department's mission and its work to address illegal child labor. Under the law, workers are entitled to the protections of the Fair Labor Standards Act's child labor provisions regardless of their immigration status or country of origin. The Department does not collect data regarding worker immigration status.*

*As a matter of practice, the WHD and the Office of the Solicitor make criminal referrals where warranted. Further, the Department's WHD investigators are trained to detect signs of possible human trafficking, exploitation, or coercion. This includes specialized training and guidance for WHD staff on the trafficking of children. When human trafficking indicators are detected, the Department makes a referral to appropriate federal, state, and/or local law enforcement agencies or taskforces, including the Department of Justice's Human Trafficking Prosecution Unit and to HHS's OTIP.*

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<sup>1</sup> In accordance with section 107(b)(1)(H) of the Trafficking Victims Protection Act (TVPA) of 2000, when the Wage and Hour Division (WHD) has information about children who may have or have experienced human trafficking, WHD will refer the matter to the department of Health and Human Services (HHS) Administration for Children and Families (ACF) Office on Trafficking in Persons (OTIP) for assessment within 24 hours of identifying the minor in order for OTIP to connect children to appropriate benefits and services in a timely manner. Source: <https://www.dol.gov/sites/dolgov/files/WHD/MOU/MOU-hhs-whd.pdf>.

including [referral mechanisms to connect children who may have experienced labor trafficking to eligible services](#) in a timely manner.

WHD works with criminal law enforcement agencies in human trafficking cases by either making referrals, receiving referrals for investigation under WHD laws or assisting with the computation of restitution for victims. Questions pertaining to criminal investigations and penalties should be referred to the Departments of Justice and Homeland Security.

In Fiscal Year 2022, WHD assessed a total \$4,386,205 in civil monetary penalties for child labor violations. Under the Fair Labor Standards Act, 29 U.S.C. 216(e)(5), civil penalties imposed by the Department for child labor violations must be deposited in the general fund of the U.S. Treasury and child victims do not have access to these funds.

3. During your testimony on October 25, 2023, you stated DOL created an interagency task force to enhance communication between agencies with UAC.
  - a. What agencies are members of this interagency task force?
  - b. How are you and your task force members providing information regarding trafficked children to law enforcement, including but not limited to Homeland Security Investigations?

**Response:** *The Department of Labor-led Interagency Task Force to Combat Child Labor Exploitation participants include the Departments of Agriculture, Commerce, Education, Health and Human Services, Homeland Security, Justice, and State, all of which are taking concrete steps to improve cross-training, outreach, education, and health outcomes of children that could be subject to child labor. The Department is committed to working closely with every member of the interagency taskforce and will do everything within its power to use interagency resources to enforce the law and protect affected children and their families.*

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*The Department of Homeland Security's U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) has authority to investigate forced labor. The Department routinely works with HSI, most often through human trafficking task forces comprised of federal, state,*

*and local law enforcement and victim service providers. Within these task forces, law enforcement entities discuss case collaboration and share information where appropriate.*