



State policy approaches to combat oppressive child labor

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US child labor laws in a nutshell

Substance:

1. No hazardous work (sometimes occupation, sometimes workplace)
2. Prohibitions on hours (time of day and total number)
3. Some states: work certificates

Enforcement:

1. All government; no private right of action or damages
2. Modest civil monetary penalties, sometimes criminal too
3. Some other tools (e.g. hot goods under Fair Labor Standards Act)



Surge in violations: how do we know?

- U.S. Department of Labor: 69% increase
- State reporting
- Media coverage: NY Times, Reuters, Boston Globe, etc.
- High profile cases: Packer Sanitation (PSSI), Chipotle, and more
- Who are the children? Who are the employers?
- In the midst of this, rollbacks?!?

To understand why this is happening...





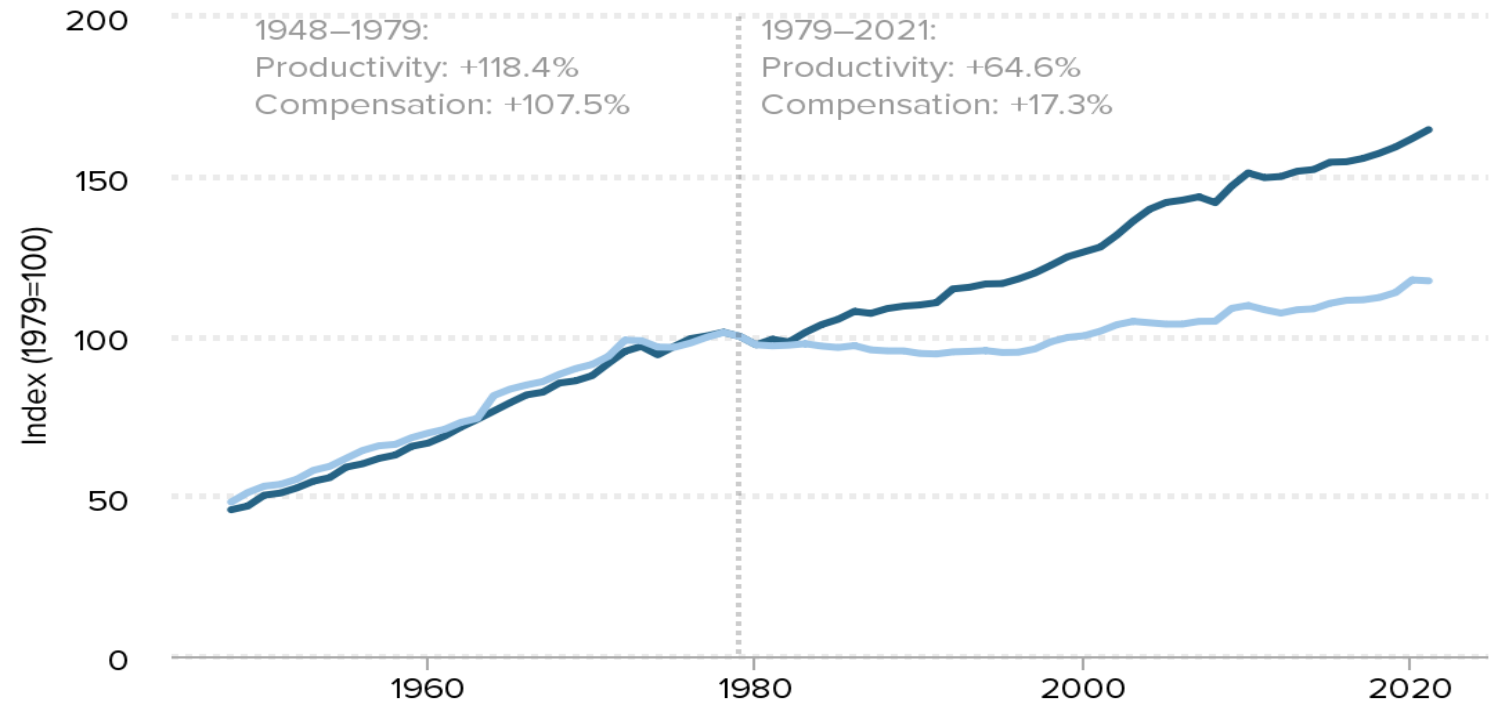
High rates of violations overall, not just child labor

- Minimum wage/wage payment
- Workplace safety and health
- Discrimination
- Violations of National Labor Relations Act (workers' right to organize)
- Retaliation against workers for exercising rights of any kind

Bad news

The gap between productivity and a typical worker's compensation has increased dramatically since 1979

Productivity growth and hourly compensation growth, 1948–2021



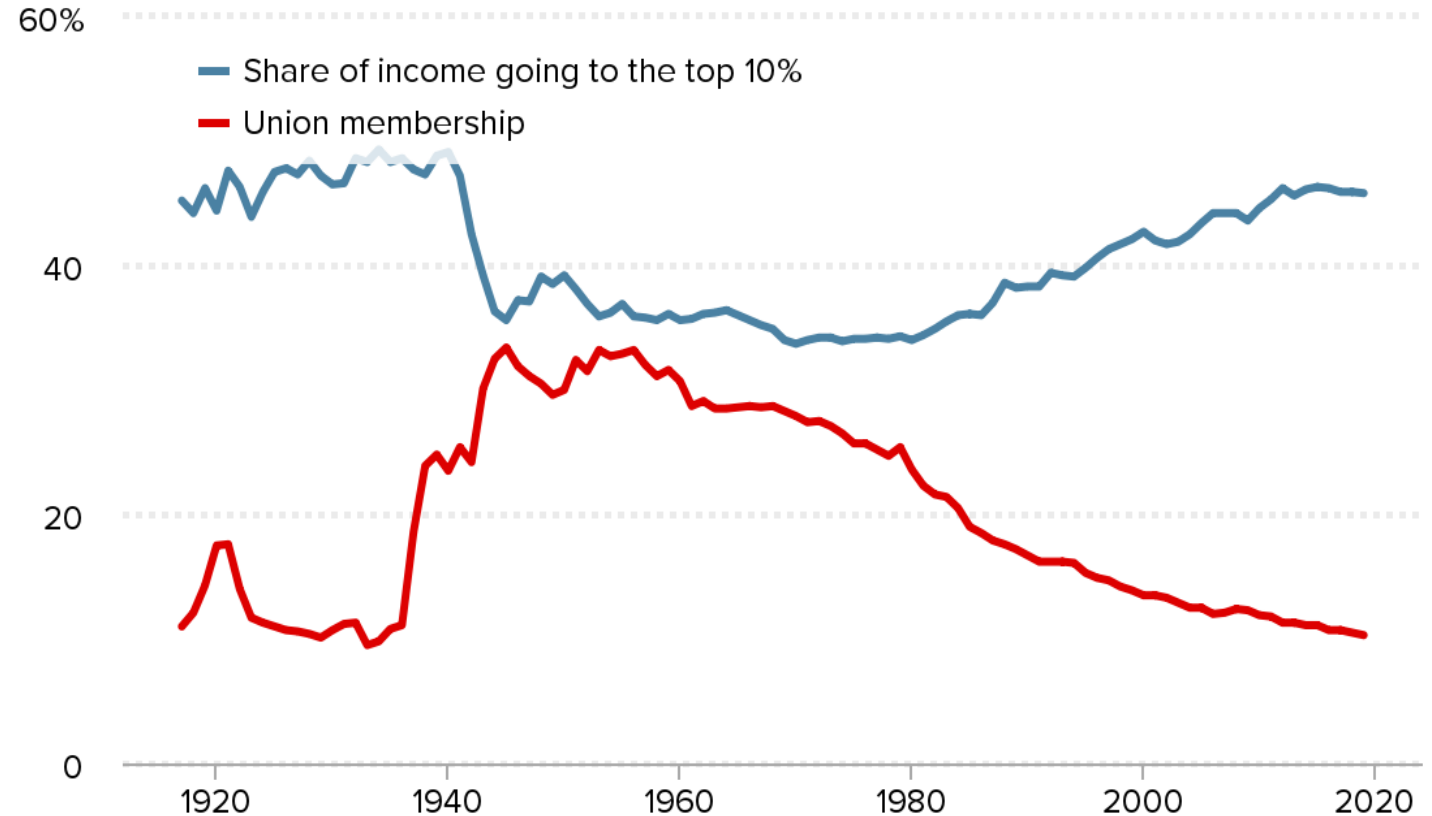
Notes: Data are for compensation (wages and benefits) of production/nonsupervisory workers in the private sector and net productivity of the total economy. “Net productivity” is the growth of output of goods and services less depreciation per hour worked.

Source: EPI analysis of unpublished Total Economy Productivity data from Bureau of Labor Statistics (BLS) Labor Productivity and Costs program, wage data from the BLS Current Employment Statistics, BLS Employment Cost Trends, BLS Consumer Price Index, and Bureau of Economic Analysis National Income and Product Accounts.

More bad news

As union membership declines, income inequality increases

Union membership and share of income going to the top 10%, 1917–2019



Source: Reproduced from Figure A in Heidi Shierholz, *Working People Have Been Thwarted in Their Efforts to Bargain for Better Wages by Attacks on Unions*, Economic Policy Institute, August 2019.



Context:

1. Decline in union density
2. Underfunded enforcement agencies (starved public sector)
3. "Fissuring" of the workplace
4. Other trends that reduce worker power and impede labor market fairness

1

Decline in union density

1950s: about 1/3 of the private sector workforce was unionized.

Now it's about 6%.

50% would like to be.

Why the historic decline?

Why the current disparity?

1

Decline in union density

Widespread employer violations of federal labor law (including retaliation): employers charged in 41.5% of all union campaigns

Fierce anti-union campaigns by paid anti-union consultants

The law itself is weak: a few examples:

- If employer violates law (retaliatory discharge, for ex), no penalty.
- No private right of action.
- Employer refuses to bargain, remedy has been...a court order to bargain

1

Decline in union density

How does this worsen overall working conditions for everyone, and what does this have to do with child labor?

- Unions mean an on-site monitor
- Unions improve conditions for non-union workplaces
- Unions increase civic participation, voter turnout, working class elected officials
- Unions as political actors lobby for stronger laws, more enforcement resources

2

Inadequate funding for enforcement

USDOL Wage and Hour Division:

- Enforces child labor and many other laws
- Nov 2022: 810 investigators
- 422 fewer than in 1978
- One per 13,580 workplaces; one per 202,824 workers

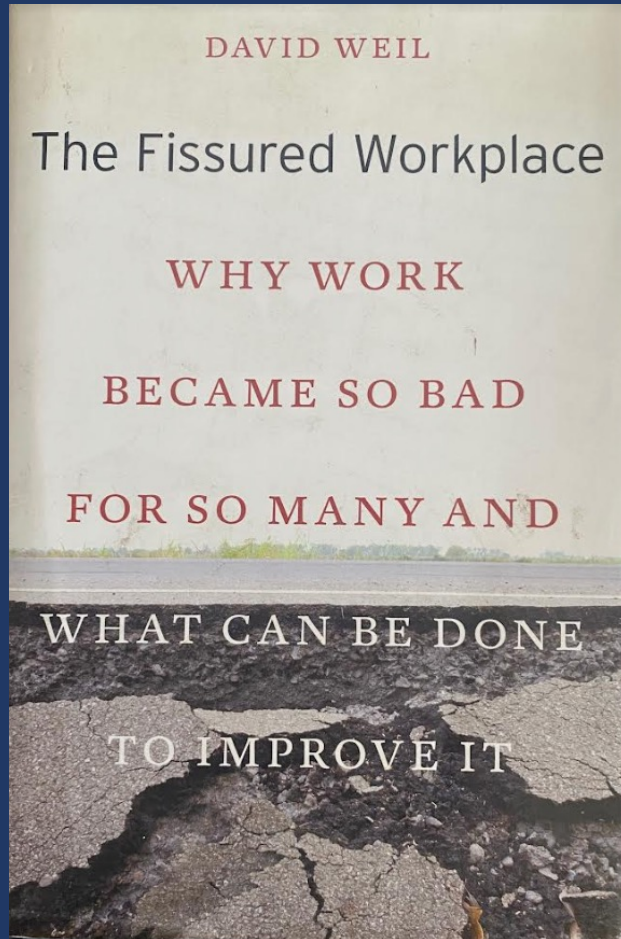
USDOL Occupational Safety and Health Administration

- Federal OSHA in 2022: 900 inspectors, enough to inspect each covered workplace every 190 years
- State plans: complex system irrelevant for our conversation but similarly general underfunded

State enforcers

- Resources vary a lot by state but also inadequate
- Politico 2018: 7 states have zero wage & hour investigators. 33 have fewer than ten.

3



Fissured workplace:

Corporations avoid directly employing people who perform core elements of their work, instead using business models that insulate them from the employment relationship:

- Contracting and subcontracting
- Use of temp and staffing agencies
- Franchise business model
- Outsourcing
- Misclassifying workers as independent contractors

3

Fissuring of the workplace



3

Fissuring of the workplace

TheUpshot

ECONOMIC TRENDS

To Understand Rising Inequality, Consider the Janitors at Two Top Companies, Then and Now

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Marta Ramos, left, is a janitor at Apple headquarters. That's the same job Gail Evans, right, held at Kodak in the 1980s. From left: Jason Henry for The New York Times; Tony Luong for The New York Times

3

Fissuring of the workplace

Fissured workplace leads to worse working conditions & more violations.

- **Top of chain: large corporations with general counsel, HR dept, profit margins.**
- **Bottom: smaller, often less-organized entities with fewer resources, thin margins**
- **Each layer in a fissured workplace has to make some profit/take a cut, leading to lower standards/cutting corners**

3

Fissuring of the workplace

Fissured workplace leads to worse working conditions & more violations.

- **Harder to enforce in fissured structure; going up the chain to seek joint employment is possible, but hard**
 - **FLSA: “suffer or permit to work”**
 - **Case law: Not so fast.**
- **This also makes it harder to prevent violations.**
- **Note: many of the recent high-profile child labor violations had fissured models.**

3

Fissuring of the workplace

- Lead corporations are very insulated from responsibility for the workers.
- But they have the ability to prevent violations!
 - Due diligence before subcontracting
 - Monitor compliance
 - Make compliance a material term of contract with consequences for violations
 - Take the work in-house! Not a law of nature that corporations have to subcontract.

United States

US meatpacker JBS opens cleaning unit after outside firm fined for hiring kids

Reuters

May 4, 2023 4:50 PM EDT · Updated 5 months ago



4

Other trends reducing worker power

- Labor market concentration
- Contract terms that prevent workers from exercising their rights
 - Non-competes
 - "Stay or pay" contracts
 - Training Repayment Agreement Provisions (TRAPS)
- Forced arbitration
 - Prevents claims from being brought
 - Enables violations to fester and not be addressed

That's the context in which child labor violations are occurring. Unlike this landscape, it's not pretty.





Employer compliance in general

Employers will not comply with the law if the expected penalties are small either because it is easy to escape detection or because assessed penalties are small. (Ashenfelter and Smith 1979).

Plain language: likelihood of compliance is a function of likelihood of detection and cost/consequences of getting caught.


Laws/policies that could help

- Facilitate more unionization (mostly relevant for federal gov't – e.g. PRO Act)
- More enforcement resources
- Greater civil monetary penalties
- Easier ways to hold lead corporations liable for violations in their supply chains:
 - CA, DC, several states in relation to construction projects
 - Or impose strict liability if repeat or widespread/multiple locations

Laws/policies that could help

Publicity

- Matthew Johnson, Duke, Regulation by Shaming: OSHA issuance of press releases for penalties above a \$ threshold significantly deterred violations by peer employers.
- Online database of violations (CA, MA, TX)
- NYS “posting” law
- New Jersey DOL “Wall of Shame”

 NEW JERSEY DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT THE WALL: Workplace Accountability in Labor List						
OSEC's Docket #	Name of Employer/DBA	Principal Address of Employer	Violation(s)	Date of Final Judgment / Order	Total Liability Owed Under Final Judgment / Order	Date Posted on the WALL
WALL-EA-000014-2023	Ajulia Executive Payroll LLC	1440 How Lane, Ste 2E North Brunswick, NJ 08816	<ul style="list-style-type: none"> • The Unemployment Compensation Law - R.S.43:21-1 et seq • The Temporary Disability Benefits Law - P.L.1948, c.110 (C.43:21-25 et al.) • The Compensation for Family Temporary Disability Leave Law - P.L.2008, c.17 (C.43:21-39.1 et al.) 	5/24/2023	\$ 760,938.64	9/7/2023

Laws/policies that could help

Procurement:

Concept: Government contracting dollars should not go to businesses that flout labor laws

- A number of local governments have enacted wage theft ordinances that create contracting consequences (i.e. the locality will not contract with them) if businesses have final adverse determinations of wage violations within a certain time period.
- On the federal level, there is a bill in the Senate, “Child Labor Exploitation Accountability Act” with a similar approach: companies competing for USDA contracts would have to disclose three years of past history; Labor Secretary can determine corrective measures for companies to remain eligible for contracts; Labor Secretary prepares a list of companies ineligible for contracts that year based on serious/repeated/pervasive labor law violations.

Laws/policies that could help

State-level hot goods

Tagging (NY garment law)



Require work permits for minors!



Phone: (617) 626-6952
mass.gov/how-to/how-to-get-a-work-permit

Employment Permit Application for 14- through 17-Year-Olds

Instructions: After completing this form and obtaining the required signatures as indicated, take this form to the Superintendent of Schools, or the person your school has authorized to issue work permits, in the school district where you live or in town where you attend school. You should bring with you proof of your age, such as your *Birth Certificate, Passport, or Immigration Record*. The Superintendent, or his or her authorized agent, will then issue you an *Employment Permit*.

Bring the signed work permit back to your employer, who must keep it until you leave the job.

Questions about this application should be directed to the Department of Labor Standards at (617) 626-6952.

If you are under 18 years of age, you must obtain a work permit before starting a new job.¹ G.L. c. 149, §§86-89. The following are the steps you should take; please note that a *Certificate of Health* is required only of 14- and 15-year-olds.

Steps for Getting an Employment Permit

1. Obtain a job offer from an employer.
2. Ask the employer to complete the following section:

Promise of Employment

Name of Minor:	
Name of Employer:	
Business Address:	
Job Title and primary duties:	
Number of hours per day Minor is to be employed:	
The undersigned agrees to employ this Minor as stated above and in compliance with state law. A summary of laws governing Minors' hours of work and hazardous occupations can be found at the end of this application form.	
Signature of Employer or Authorized Agent	Date

¹ Minors who are 17 years of age, who can show documented proof of a high school diploma or the equivalent to the school official authorized to issue work permits, do not need a signed work permit, but must still complete this permit application.

1

Legal Work Hours for Teens in Massachusetts

Note: After 8:00 p.m., all Minors must have the direct and immediate supervision of an adult Supervisor who is located in the workplace and is reasonably accessible to the Minor, unless the Minor works at a kiosk, cart, or stand in the common area of an enclosed shopping mall that has security from 8:00 p.m. until the mall is closed to the public.*

14- and 15-Year-Olds Work Hours

Only between 7 a.m. and 7 p.m. during the school year

Not during school hours

Only between 7 a.m. and 9 p.m. during the summer (from July 1 through Labor Day)

Maximum Hours When School Is in Session

18 hours a week

3 hours a day on school days

8 hours a day Saturday, Sunday, Holidays

6 days a week

Maximum Hours When School Is Not in Session

40 hours a week

8 hours a day

6 days a week

16- and 17-Year-Olds Work Hours*

Only between 6 a.m. and 10 p.m. (on nights preceding a regularly scheduled school day) – if the establishment stops serving clients or customers at 10:00 p.m., the Minor may be employed until 10:15 p.m.

Only between 6 a.m. and 11:30 p.m. (on nights **not** preceding a regularly scheduled school day).

Exception for restaurants and racetracks: only between 6 a.m. and 12:00 midnight (on nights **not** preceding a regularly scheduled school day).

Maximum Hours of Work – Whether or Not School is in Session

48 hours a week

9 hours a day

6 days a week

* Indicates a change Massachusetts Child Labor Laws, effective date January 3, 2007.

Require work permits for minors!



Employment Standards Program
PO Box 44510
Olympia WA 98504-4510

Parent/School Authorization

For parents or legal guardians and school officials to indicate approval for a minor employee to work accordingly to the terms listed by the employer and within the limits of child labor regulations.

Employer Information

Before allowing a minor to begin work, you must obtain and keep on file, at the minor's workplace, a fully completed Parent/School Authorization. As the employer, it is your responsibility to ensure that this form is completed by you before collecting signatures.

Employer Business Name	Phone Number
Washington Unified Business Identifier (UBI)	Expiration Date of Minor Work Permit
Location Address (Physical location where minor will be working)	City State Zip Code
Contact Name	
Wage per Hour \$	
List of Specific Job Duties	



Require work permits for minors!

Hours and Work Schedule — Parents & schools may adjust hours and schedule as needed.

Minors **cannot** work during the hours that school is in session. Employers should refer to the school's website to determine what these hours are.

Hours and Schedules Minors are Permitted to Work in Non-Agricultural Jobs

Age Group	School Week	Hours/Day	Hours/Week	Days/Week	Begin	Quit
14 — 15 Years Old	School Week	3 hours (8 hrs Sat-Sun)	16 hours	6 days	7 a.m.	7 p.m.
	Non-School Week	8 hours	40 hours	6 days	7 a.m.	7 p.m. (9 p.m. June 1 to Labor Day)
16 — 17 Years Old	School Week	4 hours (8 hrs Fri – Sun)	20 hours	6 days	7 a.m.	10 p.m. (Midnight Fri – Sat)
	School Week with a special variance	6 hours (8 hrs Fri – Sun)	28 hours	6 days	7 a.m.	10 p.m. (Midnight Fri – Sat)
	Non-School Week	8 hours	48 hours	6 days	5 a.m.	Midnight

- An adult must supervise minors working after 8 p.m. in service occupations such as restaurants and retail businesses.
- Overtime rules apply for all hours worked over 40 in one week.
- Special Variance does not apply to home-schooled students.

Hours and Schedules Minors are Permitted to Work in Agricultural Jobs

Age Group	School Week	Hours/Day	Hours/Week	Days/Week	Begin	Quit
12 — 13 Years Old	Non-School Week	8 hours	40 hours	6 days	5 a.m.	9 p.m.
14 — 15 Years Old	School Week	3 hours (8 hrs. non-school days)	21 hours	6 days*	7 a.m. (6 a.m. in animal agriculture & irrigation)	8 p.m.
	Non-School Week	8 hours	40 hours	6 days*	5 a.m.	9 p.m.
16 — 17 Years Old	School Week	4 hours (8 hrs non-school days)	28 hours	6 days*	5 a.m.	10 p.m. (No later than 9 p.m. on more than 2 consecutive nights before a school day)
	Non-School Week	10 hours	50 hours (60 hours per week in mechanical harvest of peas, wheat, and hay)	6 days*	5 a.m.	10 p.m.

- 12 – 13 year-olds may work only during non-school weeks hand-harvesting berries, bulbs, cucumbers, and spinach.

*Exception — 14 – 17 year-olds are allowed to work 7 days a week in dairy, livestock, hay harvest, and irrigation during school and non-school weeks.

	Days	Hours per Day		Hours per Week		Start Time <i>Circle A.M. or P.M.</i>		Quitting Time <i>Circle A.M. or P.M.</i>	
		Employer	Parent/ School Adj.	Employer	Parent/ School Adj.	Employer	Parent/ School Adj.	Employer	Parent/ School Adj.
School Weeks	Mon — Thurs					A.M. / P.M.	A.M. / P.M.	A.M. / P.M.	A.M. / P.M.
	Fri — Sun					A.M. / P.M.	A.M. / P.M.	A.M. / P.M.	A.M. / P.M.
Non-School Weeks	Sun — Sat <i>Parents adjust only</i>					A.M. / P.M.	A.M. / P.M.	A.M. / P.M.	A.M. / P.M.

Laws/policies that could help

Mandate workers' rights education!

- California just enacted AB100, designating a specific “Workplace Readiness Week.” All public high schools must observe that week each year by educating students on their rights as workers.
- Topics: child labor, wage and hour protections, worker safety, workers' compensation, paid leave, the right to organize a union, anti-retaliation protections, and more.
- Useful not just in relation to child labor, but also for life!
- (Most adults don't know their rights at work)



Laws/policies that could help

- Private right of action
- Whistleblower right of action
- Liquidated or compensatory damages for minors
- Immigration-related (right to counsel, work authorization)



Thoughts on enforcement

- Resource-intensive
- Requires collaboration and partnering
- Requires specialized skills for investigators (MN meatpacking example)
- Note on criminal enforcement: focus on employers. Pursuing parents or guardians is a terrible idea. It will be counter-productive because it will chill reporting of violations and push child labor further into the shadows. Education is a better approach.

Thoughts on enforcement

Many potential government enforcers and actors can either address violations or have this on their radar:

- State labor dept
- AGs
- DAs
- local (city/county) labor offices, where they exist
- Building inspectors
- Health inspectors

Role of schools

- Teachers in some of the enforcement cases didn't know what to do



Final thought:

If we want to stop child labor in the United States,
we need to value children and labor
a lot more than we currently do.



Additional final thought:

There's a lot we can do!



Questions?

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