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## Want to Solve Labor Shortages? Relaxing the Child Labor Law Is Not the Answer

Yi Wu

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# Want to Solve Labor Shortages? Relaxing the Child Labor Law Is Not the Answer

Yi Wu\*

ABSTRACT

Recently, the United States has been engaged in a nationwide debate over loosening regulations regarding children’s employment. The Fair Labor Standards Act (FLSA) sets restrictions on the working hours of children under 16 and prohibits their employment in certain hazardous positions. However, some states, such as Iowa, Ohio, Arkansas, and Wisconsin, have either passed or are considering legislation allowing children to work longer hours or in potentially dangerous conditions in response to labor shortages. These new state laws conflict with existing federal regulations. This Comment discusses why states should refrain from relaxing their child labor laws to permit children to work longer hours than the federal limit or in hazardous conditions, and why the relaxed child labor laws in Iowa and Arkansas should be invalidated due to conflict preemption. For states contemplating loosening their child labor laws, like Ohio and Wisconsin, policymakers should carefully consider preemption issues and policy implications before making a decision.

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## INTRODUCTION

The Fair Labor Standards Act (FLSA) establishes the minimum employment age, regulates the working hours for children under 16, and prohibits their employment in specific hazardous roles.<sup>1</sup> The FLSA's child labor provisions aim to protect the educational opportunities and the safety of young Americans.<sup>2</sup>

In some states, legislators have recently eased their child labor regulations in response to labor shortages.<sup>3</sup> Consequently, from 2015

1. 29 U.S.C. § 212.

2. See *Workers Under 18*, U.S. DEP'T OF LAB., <https://tinyurl.com/2n9cwnku> [perma.cc/4JHE-MAJ6] (last visited July 27, 2024).

3. See *New State Laws Are Rolling Back Regulations on Child Labor*, NPR (Apr. 27, 2023, 4:50 PM), <https://tinyurl.com/3rv4nx52> [https://perma.cc/TP84-KTEK] ("In states like Iowa, Missouri, Ohio, and Arkansas, newly passed or pending laws allow companies to hire children without work permits and allow children to work longer hours under more dangerous conditions in places like construction sites, meat packing plants, and automobile factories.").

to 2022, there was a 54 percent increase in child labor cases investigated by the Department of Labor.<sup>4</sup> In addition, the number of minors unlawfully employed in hazardous occupations increased by 94 percent.<sup>5</sup>

Under the Supremacy Clause of Article VI, federal law preempts state law when there is a conflict between federal and state standards.<sup>6</sup> Since the federal standards set the floor, states may make stricter laws to give children more protection rather than set a lower standard to put children in peril.<sup>7</sup>

This Comment analyzes why states cannot change their child labor laws to allow children to work longer hours than the federal limitation or under dangerous conditions. First, state child labor laws that conflict with the FLSA are preempted because compliance with both is impossible, and loosening the child labor law may interfere with the purpose of the FLSA.<sup>8</sup> Second, educating minors is more important than solving the labor shortage.<sup>9</sup> Third, the new and proposed state laws endanger the health and safety of children.<sup>10</sup>

For states that have already relaxed their child labor laws, like Iowa and Arkansas, the relevant parts of the statutes that conflict with the federal limitation should be nullified.<sup>11</sup> Also, the above

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4. See *Child Labor*, U.S. DEP'T OF LAB., <https://tinyurl.com/4wnxbfv2> [<https://perma.cc/HK5R-8XPX>] (last visited July 27, 2024); USAFacts Team, *Is Child Labor Increasing in the US?*, USAFACTS (July 27, 2024), <http://tinyurl.com/yeypjbc4> [<https://perma.cc/AMP5-L46G>] (“But from 2015 to 2022, the number of minors employed in violation of child labor laws rose by 283%, according to data from the US Department of Labor’s Wage and Hour Division.”).

5. *Child Labor* *supra* note 4; USAFacts Team *supra* note 4.

6. U.S. CONST. art. VI.

7. See *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 144 n.13 (1963) (“Rather, the Court simply considered it a well-settled proposition that a State may impose upon imported foodstuffs ‘a higher standard demanded for its consumers.’”).

8. See *Gonzales v. Raich*, 545 U.S. 1, 29 (2005) (stating that federal law shall prevail if there is any conflict between federal and state law).

9. See *Five Reasons Why Eradicating Child Labor Is Crucial For Education*, GLOB. BUS. COAL. FOR EDUC., <https://tinyurl.com/5n6yek7v> [<https://perma.cc/PG5Q-XVBH>] (last visited July 27, 2024) (“In addition to the disadvantages faced by many workers in poorer countries, such as hazardous working conditions, long hours, lack of mandated leave, etc., child laborers are denied a fundamental human right: the right to education.”).

10. See Amir Radfar et al., *Challenges & Perspectives of Child Labor*, 27 INDUS. PSYCH. J. 17, 19 (Jan. 2018), <https://tinyurl.com/3jhzumau> [<https://perma.cc/FDP5-CQ4J>] (“The health of children is endangered by work in hazardous conditions, abuse, exhaustion, malnutrition, or exposure to toxic materials. The psychological harm leads to behavioral problems later on in life.”).

11. See *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 537 (2001) (“The District Court also concluded that a provision that permitted retailers to display a black and white ‘tombstone’ sign reading ‘Tobacco Products Sold Here,’ 940 Code of Mass. Regs. § 21.04(6) (2000), was pre-empted by the FCLAA.”).

states must follow federal law protecting young workers.<sup>12</sup> For states considering or actively loosening their child labor laws, lawmakers should consider the preemption issue and relevant policy considerations, specifically the education and safety of children.

## I. BACKGROUND

### A. *Child Labor Laws Before the FLSA*

Child labor laws originated during the Industrial Revolution, when children worked longer hours for meager pay, frequently in hazardous conditions such as factories and coal mines.<sup>13</sup> Poor children were particularly expected to work on behalf of their families and give up educational opportunities.<sup>14</sup>

With an increasing number of minors being employed, some states began to protect children by establishing their own child labor standards.<sup>15</sup> In 1836, Massachusetts became the first state to enact child labor laws, providing that children under 15 who were employed must attend school for a minimum of 3 months each year.<sup>16</sup> Child labor emerged as a federal legislative concern in 1906 with the introduction of the Beveridge proposal aimed at regulating the types of work in which children could be engaged.<sup>17</sup> While the 1906 legislation was not enacted, it prompted an extensive examination of the conditions under which children were permitted to work and set the groundwork for the FLSA in 1938.<sup>18</sup>

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12. *See id.*

13. *See* Jacqueline Froelich, *New Law Weakening Child Labor Protections in Arkansas Takes Effect*, KUAF (Aug. 15, 2023, 3:30 PM), <https://tinyurl.com/4fhfx35m> [<https://perma.cc/LCA6-8Q73>].

14. *See id.*

15. *See* Daniela Porat, *A Berkeley Law Prof Shows How to Solve Child Labor Crisis*, LAW360 (Nov. 1, 2023, 4:00 PM), <https://tinyurl.com/mse4sunf> [<https://perma.cc/GF5A-EZ5W>] (“These are problems that existed 150 years ago and there was a massive legislative effort in the late 19th, and especially the first three and four decades of the 20th century, to eradicate these practices.”).

16. *See* Ariana Figueroa, *Kids at Work: States Try to Ease Child Labor Law at Behest of Industry*, Mo. INDEP. (Apr. 7, 2023, 12:26 PM), <http://tinyurl.com/ym8wk4m4> [<https://perma.cc/LL3R-NGSK>] (“Massachusetts was the first state to pass child labor laws in 1836 that required children under 15 who worked in factories to attend school for a minimum of three months out of the year.”).

17. GERALD MAYER, CONG. RSCH. SERV., RL31501, CHILD LABOR IN AMERICA: HISTORY, POLICY, AND LEGISLATIVE ISSUES 3 (2012).

18. *Id.* at 6.

*B. The FLSA and Its Effect on State Child Labor Laws*

On June 25, 1938, President Franklin D. Roosevelt signed the FLSA into law, which banned oppressive child labor.<sup>19</sup> Under the FLSA, children aged 14 and 15 are restricted to working no more than 3 hours on a school day and a maximum of 18 hours per week while attending school.<sup>20</sup> Minors are not allowed to work before seven a.m. or after seven p.m., except during the summer.<sup>21</sup> The FLSA further requires a certificate of age to protect an employer from inadvertent violations of the minimum age standards under the Act.<sup>22</sup> Additionally, individuals under 16 are prohibited from working in specific hazardous occupations, such as meat processing and manufacturing occupations, as defined by the Secretary of Labor.<sup>23</sup>

As a result of federal regulations, there has been a heightened focus on children's education and health due to the evolution of child labor laws and increased legal awareness.<sup>24</sup> Stringent regulations regarding the working environment and allowable working hours for minors have become commonplace.<sup>25</sup> Congress did not prohibit states from passing more strict laws than federal regulations.<sup>26</sup> For instance, in Massachusetts, children must be supervised by an adult when working after 8 p.m., and most 16–17-year-olds are prohibited from working beyond 10 p.m.<sup>27</sup> In 1914, Arkansas enacted its child

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19. See Jonathan Grossman, *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*, U.S. DEP'T OF LAB., <https://tinyurl.com/2s3w39au> [<https://perma.cc/C9S6-4QVN>] (last visited July 27, 2024) (“On Saturday, June 25, 1938, to avoid pocket vetoes 9 days after Congress had adjourned, President Franklin D. Roosevelt signed 121 bills. Among these bills was a landmark law in the nation's social and economic development—the Fair Labor Standards Act of 1938 (FLSA).”).

20. See 29 C.F.R. § 570.35 (2023).

21. See *id.*

22. See *id.* § 570.5 (2023).

23. See *id.* § 570.33 (2023).

24. See Henry Gass, *Get a Job: After 100 Years, States Loosen Child Labor Law*, THE CHRISTIAN SCI. MONITOR (June 6, 2023), <https://tinyurl.com/4rwv2kuz> [<https://perma.cc/8BL5-WADM>] (“Led by state governments, a nation that saw children as necessary participants in the household economy shifted to a country that saw children as valuable democratic citizens in need of education.”).

25. See *id.*

26. See The Conversation, *States Are Loosening Restrictions on Child Labor*, U.S. NEWS & WORLD REP. (June 26, 2023), <https://tinyurl.com/yc8cz43d> [<https://perma.cc/2KRK-4JFW>].

A movement to weaken American child labor protections at the state level began in 2022. By June 2023, Arkansas, Iowa, New Jersey and New Hampshire had enacted this kind of legislation, and lawmakers in at least another eight states had introduced similar measures . . . If states pass tougher laws, as many have, the stricter standards govern workplace practices.

*Id.*

27. See MASS. GEN. LAWS ANN. ch. 149, § 65 (West 2023).

labor law, which required parents and employers to sign and submit work permits for approval by the state division of labor.<sup>28</sup>

### C. *Recent Development of State Child Labor Laws*

Recently, legislatures in some states passed laws or tried to loosen the hours and occupations minors can work in.<sup>29</sup> A heated debate has emerged in the United States regarding whether a state can loosen its regulations concerning children's employment.<sup>30</sup>

States such as Iowa, Arkansas, Ohio, and Wisconsin recently enacted or proposed legislation that permits children to work longer hours than those stipulated by the FLSA or engage in hazardous occupations.<sup>31</sup> Iowa passed its new child labor law in July 2023, which permits children younger than 16 to work up to 6 hours during school days instead of the previous 4-hour maximum.<sup>32</sup> Additionally, it allowed children as young as 14 to work in environments such as meat coolers and industrial laundries; teenagers aged 15 and older were allowed to work on assembly lines near hazardous machinery.<sup>33</sup> However, opponents argue that the new law risks children's health in the short term and could lead to poorer educational outcomes in the long term.<sup>34</sup>

Meanwhile, in Arkansas, the Youth Hiring Act of 2023 repealed a century-old law mandating employers of children under 16 to verify

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28. See Froelich, *supra* note 13.

29. See Ali Rogin & Kalisha Young, *Why Several States are Pushing to Loosen Child Labor Restrictions*, PBS NEWS WEEKEND (June 3, 2023, 5:35 PM), <http://tinyurl.com/p86m7uf2> [<https://perma.cc/5YVG-GGWJ>] ("So far this year, Iowa and Arkansas have passed laws to loosen child labor restrictions, and four other Midwestern states are advancing bills through their legislatures. Last year, New Jersey and New Hampshire signed bills to lower age restrictions around child workers.").

30. See The Conversation, *supra* note 26.

31. See Rachel M. Cohen, *The Republican Push to Weaken Child Labor Laws, Explained*, Vox (May 5, 2023, 1:20 PM), <http://tinyurl.com/4jesx3te> [<https://perma.cc/S2D8-JENA>].

Wisconsin is not the only state looking to loosen labor laws affecting minors, and over the last few months there have been Republican-led bills in states like Arkansas, Ohio, and Iowa aimed at making it easier for teenagers to work in more jobs and for more hours in the day.

*Id.*

32. See IOWA CODE ANN. § 92.7 (West 2023); see also Al Jazeera Staff, *US Cracks Down on Child Labor Violations amid Loosening Law*, AL JAZEERA (July 8, 2023), <https://tinyurl.com/mrxkwtsh> [<https://perma.cc/36NB-6GSB>] ("Iowa's new standards also permit children younger than 16 to work up to six hours during school days, up from the previous cap of four hours.").

33. See IOWA CODE ANN. § 92.5 (West 2023); see also John A. Fliter, *States are Weakening Their Child Labor Restrictions Nearly 8 Decades After the US Government Took Kids Out of the Workplace*, THE CONVERSATION (June 26, 2023, 8:22 AM), <http://tinyurl.com/4w2xetve> [<https://perma.cc/P87E-DYVV>].

34. See Gass, *supra* note 24.



the child's age and obtain parental consent.<sup>35</sup> Supporters argued that the new law would eliminate a burdensome requirement and enable parents to make decisions for their children.<sup>36</sup> Opponents contended that the new law could negatively impact teenagers, as some employers might disregard age restrictions to allow children to work longer hours than legally permitted or in hazardous occupations.<sup>37</sup> Additionally, since one of the functions of the work permit is to guarantee that children under 16 do not work late on school nights, the new law also undermines the intent of the FLSA.<sup>38</sup>

Some states have not relaxed their child labor laws but are actively considering it. For example, Wisconsin legislators plan to relax working hours for children as young as 14.<sup>39</sup> Likewise, an Ohio bill was introduced in 2021 that permitted students aged 14 and 15 to work until 9 p.m. on school days.<sup>40</sup> It passed the Ohio Senate but was not put to a vote in the House.<sup>41</sup> Nevertheless, Ohio lawmakers are still contemplating amending their child labor law to address labor shortages.<sup>42</sup>

However, the Biden administration is struggling to enforce existing federal regulations on child labor.<sup>43</sup> On August 24, 2023, a

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35. See Froelich, *supra* note 13.

36. See Kaitlyn Radde, *Arkansas Gov. Sanders Signs a Law That Makes It Easier to Employ Children*, NPR (Mar. 10, 2023, 12:07 PM), <http://tinyurl.com/4h4yns3b> [<https://perma.cc/QK4V-44TT>].

37. See Sydney Kashiwagi, *Arkansas Governor Signs Bill Rolling Back Child Labor Protections*, CNN POLITICS (March 8, 2023, 5:52 PM), <http://tinyurl.com/57n6mamj> [<https://perma.cc/5EBB-HUM4>] (“But opponents of the legislation have argued that the work certificate served as a form of protection for vulnerable youth, especially immigrant youth, who may not always have a parent or guardian to sign off for them to work and who could be exploited without that certificate.”).

38. *Egelhoff v. Egelhoff*, 532 U.S. 141, 152 (2001).

39. See *Bill Would Eliminate Wisconsin Work Permits for 14*, MILWAUKEE J. SENTINEL (Aug. 22, 2023), <http://tinyurl.com/yc4cph8r> [<https://perma.cc/8ET9-NKBV>].

40. See Jake Zuckerman, *Ohio Could Soon Loosen Its Child Labor Laws*, CLEVELAND.COM (May 9, 2023, 3:28 PM), <http://tinyurl.com/mrynvdn> [<https://perma.cc/8TZS-ZEVD>].

Under current state and federal law, most 14- and 15-year-olds can only work until 7 p.m. during the school year, and until 9 p.m. during holidays and the summer. Senate Bill 30 would change state law only, allowing the minors to work the extra two hours year-round so long as they receive parental approval.

*Id.*

41. Susan Tebben, *Bill Extending Child Work Hours Passes Ohio Senate*, OHIO CAP. J. (March 10, 2023, 4:55 AM), <http://tinyurl.com/ym4yyf48> [<https://perma.cc/FN8F-JTVC>].

42. See Harm Venhuizen, *Wisconsin Lawmakers Want Children to Fill Labor Shortages, in Bars and on School Nights*, Fox11News (May 25, 2023, 3:21 PM), <https://tinyurl.com/2bjm3z4> [<https://perma.cc/8EDY-KQHK>].

43. See Aline Barros, *Biden Administration Announces Measures to Curb Illegal Child Labor*, VOA (Mar. 2, 2023, 3:16 PM), <http://tinyurl.com/3hn4a4hr> [<https://perma.cc/8EDY-KQHK>].



letter from the U.S. Department of Labor asserted that the new Iowa child labor law, which relaxes child labor restrictions, contradicts federal law.<sup>44</sup> The letter further emphasized that adherence to federal law is necessary as it offers enhanced protection for young workers.<sup>45</sup> The U.S. Department of Labor recently disclosed that between October 2022 and July 2023, approximately 4,500 children were employed in contravention of federal child labor laws, resulting in employers being fined over \$6.6 million in penalties.<sup>46</sup>

#### *D. The Supremacy Clause*

The Constitution's most important constraint on the power of states is the Supremacy Clause of Article VI, which provides that federal law, including the Constitution, treaties, and statutes, is the supreme law of the land.<sup>47</sup> Federal law shall prevail if any conflict exists between federal and state law.<sup>48</sup> Any state law that directly conflicts with federal law, impedes the objective of federal law, or regulates a field traditionally occupied by Congress, will be preempted by federal law.<sup>49</sup> Given that the FLSA explicitly establishes its regulations as minimum standards, states retain the authority to implement stricter child

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perma.cc/6T96-JSD8] ("The Biden administration this week announced a task force and extra measures to curb child labor in response to a significant increase in the illegal employment of migrant children in the United States and a recent *New York Times* investigation of migrant child labor.").

44. See *Globe Gazette, Feds: Iowa Child Labor Expansion Conflicts with Federal Law*, NEWSBANK (Sept. 5, 2023), <https://tinyurl.com/2yc8h4c2> [<https://perma.cc/CZT8-UDKA>].

45. See *id.*

46. See Froelich, *supra* note 13.

47. See U.S. CONST. art. VI.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

*Id.*

48. See *Gonzales v. Raich*, 545 U.S. 1, 29 (2005) ("The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.").

49. See *Arizona v. United States*, 567 U.S. 387, 388 (2012). The Court stated: The Supremacy Clause gives Congress the power to pre-empt state law. A statute may contain an express pre-emption provision, . . . but state law must also give way to federal law in at least two other circumstances. First, States are precluded from regulating conduct in a field that Congress has determined must be regulated by its exclusive governance . . . Second, state laws are pre-empted when they conflict with federal law, including when they stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

*Id.* (internal citations omitted).

labor laws than those stipulated by the FLSA, provided these laws do not conflict with the FLSA.<sup>50</sup> For instance, the Colorado bill passed on June 7, 2023, which permitted injured children to sue employers for child labor violations, should be upheld as it offers more stringent protection for children.<sup>51</sup>

*E. Important Policy Considerations*

Due to policy considerations, the relaxed child labor laws threaten children's education and safety.<sup>52</sup> One of the critical purposes of the FLSA is to guarantee that a child's employment does not disrupt their educational endeavors.<sup>53</sup> Presently, despite restrictions on children's working hours during school days, children frequently experience fatigue and difficulty concentrating on their schoolwork.<sup>54</sup> The above conditions will negatively affect children's academic performance.

In addition, the health and safety of children will be endangered.<sup>55</sup> First, the health of children will be threatened by work exhaustion.<sup>56</sup> Extending working hours may indirectly influence children's health through sleep deprivation.<sup>57</sup> Second, the safety of children will be endangered by working in hazardous conditions.<sup>58</sup>

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50. See 29 U.S.C. § 218(a) (2023).

No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter.

*Id.*

51. See Fliter, *supra* note 33.

52. See *Five Reasons Why Eradicating Child Labor Is Crucial for Education*, *supra* note 9.

53. See Judy Wiseman, Comment, *Barriers to Education for Children of Migrant Farm Workers*, 13 SAN. JOAQUIN. AGRIC. L. REV. 49, 63–64 (2003).

54. Shelley Davis, *Child Labor in Agriculture*, ERIC, <http://tinyurl.com/sdh62jbp> [<https://perma.cc/YDE2-BNDE>] (last visited July 27, 2024).

55. See Radfar et al., *supra* note 10.

56. See *id.*

57. See Tim Walker, *Later School Start Times More Popular, but What Are the Drawbacks?*, NEAToday (Dec. 1, 2022), <http://tinyurl.com/mr947px4> [<https://perma.cc/DHB6-97MA>] (“Inadequate sleep can lead to countless negative health consequences that impact students’ ability to learn.”).

58. See Aimee Picchi, *More Kids Are Working Dangerous Jobs amid Weaker Labor Laws, Child Migration*, CBS NEWS (July 27, 2023, 1:20 PM), <http://tinyurl.com/2n3xhjya> [[perma.cc/Y8U6-DRDX](https://perma.cc/Y8U6-DRDX)].

Children employed in specific hazardous roles experience elevated rates of injury and fatalities.<sup>59</sup>

## II. ANALYSIS

States should not relax their child labor laws to allow children to work for longer hours than the federal limitation or work under dangerous conditions. First, state child labor laws that conflict with the FLSA should be preempted. Second, educating minors is more important than solving the labor shortage.<sup>60</sup> Third, the health and safety of children will be endangered.<sup>61</sup>

### A. *State Child Labor Laws that Conflict with the FLSA Should Be Preempted*

Under Article VI, the Supremacy Clause states that the Constitution is the supreme law of the land.<sup>62</sup> The Supremacy Clause provides that federal law shall prevail if any conflict exists between federal and state law.<sup>63</sup> Case law provides three ways in which federal law can preempt state law: (1) express preemption, where Congress expressly states that the federal law preempts the state law; (2) field preemption, where Congress explicitly or implicitly leaves “no room” for state law, or where federal law is so dominant that it will be assumed to preclude enforcement of state law; and (3) conflict preemption, where the state law actually conflicts with the federal law.<sup>64</sup>

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59. See Hope Ferdowsian, *Opinion: Now Is Not the Time to Loosen Child Labor Regulations – Especially in Dangerous Industries*, THE AUSTIN CHRON. (July 21, 2023), <http://tinyurl.com/2sww55pw> [<https://perma.cc/G4KJ-PWFE>].

60. See *Five Reasons Why Eradicating Child Labor Is Crucial for Education*, *supra* note 9.

61. See Radfar et al., *supra* note 10.

62. See U.S. CONST. art. VI.

63. See *Gonzales v. Raich*, 545 U.S. 1, 29 (2005) (“The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.”).

64. See *Hillsborough Cnty. v. Automated Med. Lab’ys, Inc.*, 471 U.S. 707, 713 (1985). There, the Court explained:

Under the Supremacy Clause, federal law may supersede state law in several different ways. First, when acting within constitutional limits, Congress is empowered to pre-empt state law by so stating in express terms. In the absence of express pre-emptive language, Congress’ intent to pre-empt all state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress “left no room” for supplementary state regulation. Pre-emption of a whole field also will be inferred where the field is one in which “the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.”

*Id.* (internal citations omitted).

Here, although Congress neither expressly states that the federal child labor laws would preempt state laws nor leave “no room” for state laws, Iowa’s new child labor laws should still be preempted because they conflict with federal law.

1. *The Loosened State Child Labor Law Conflicts with the FLSA*

The plain language of the Supremacy Clause supports the principle that a court must apply federal law when there is a potentially applicable state law that imposes conflicting requirements—that is, “when courts cannot apply *both* state law *and* federal law, but instead must choose between them.”<sup>65</sup> Specifically, conflict preemption arises when compliance with both state and federal regulation would be impossible or when state law impermissibly obstructs the goals of federal regulation.<sup>66</sup> Here, the loosened state child labor law should be preempted by existing federal law because (a) compliance with both state child labor laws and federal regulations would be impossible, and (b) relaxing the child labor law interferes with the purpose of the FLSA.

a. *Compliance with Both the Loosened State Child Labor Law and Federal Regulations Would Be Impossible*

First, adhering to state child labor laws and federal regulations would be impractical. For instance, Iowa allows children under 16 to work up to 6 hours during school days, whereas federal regulations stipulate a limit of no more than 3 hours on a school day.<sup>67</sup> Consequently, if an employer hires a 15-year-old child to work for 5 hours on a school day, they will comply with the new Iowa standard but violate federal regulations. Similarly, if Ohio successfully relaxes its child labor law to permit students aged 14 and 15 to work until 9 p.m. during school days, an employer will violate federal law by allowing a 15-year-old child to work after 7 p.m.<sup>68</sup>

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65. See Ernest A. Young, “*The Ordinary Diet of the Law*”: *The Presumption Against Preemption in the Roberts Court*, 2011 THE SUP. CT. REV. 253, 325.

66. See *Student Loan Servicing All. v. District of Columbia*, 351 F. Supp. 3d 26, 59 (D.D.C. 2018).

67. Compare IOWA CODE ANN. § 92.7 (West 2023) (“The hours of work of persons under sixteen years of age employed outside school hours shall not exceed six in one day or twenty-eight in one week while school is in session.”), with 29 C.F.R. § 570.35 (a)(5) (2023) (“Except as provided in paragraph (c) of this section, employment in any of the permissible occupations to which this subpart is applicable shall be confined to the following periods: . . . Not more than 3 hours in any 1 day when school is in session, including Fridays . . .”).

68. See 29 C.F.R. § 570.35(a)(6) (2023).

Except as provided in paragraph (c) of this section, employment in any of the permissible occupations to which this subpart is applicable shall be

In *Gade v. National Solid Wastes Management Association*,<sup>69</sup> the Court stated that the Illinois law is overridden by the federal Occupational Safety and Health Act standards because of conflict preemption.<sup>70</sup> An Illinois law imposed training, examination, experience, and licensing requirements upon employees at hazardous waste facilities and hazardous waste management equipment operators.<sup>71</sup> The National Solid Wastes Management Association, as the plaintiff, asserted that federal Occupational Safety and Health Act (the "Act") standards preempted the state statutes.<sup>72</sup> The Court reasoned that Congress intended the Act to limit the regulation of occupational safety to only one set of standards because the Act deprived a state of all jurisdiction over workplace safety when a state regulatory plan was disapproved.<sup>73</sup> Thus, the Illinois law was preempted because it interfered with federally prescribed methods for achieving the regulatory goal.<sup>74</sup> Although state law may advance the same ultimate goal as federal regulation, this fact does not save it from standing as an obstacle to implementing federal law.<sup>75</sup>

In *Florida Lime & Avocado Growers, Inc. v. Paul*,<sup>76</sup> the Supreme Court stated that when both federal law and state law are on point, federal law preempts state law if there is a conflict between the two

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confined to the following periods: . . . Between 7 a.m. and 7 p.m. in any 1 day, except during the summer (June 1 through Labor Day) when the evening hour will be 9 p.m.

*Id.*

69. *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88 (1992).

70. *See id.* at 108–09. The Court stated:

Because neither of the OSH Act's saving provisions are implicated, and because Illinois does not have an approved state plan under § 18(b), the state licensing acts are pre-empted by the OSH Act to the extent they establish occupational safety and health standards for training those who work with hazardous wastes.

*Id.*

71. *See id.* at 92.

72. *See id.*

73. *See id.* at 99. The Court stated:

The design of the statute persuades us that Congress intended to subject employers and employees to only one set of regulations, be it federal or state, and that the only way a State may regulate an OSHA-regulated occupational safety and health issue is pursuant to an approved state plan that displaces the federal standards.

*Id.*

74. *See id.* at 103 ("A state law also is pre-empted if it interferes with the methods by which the federal statute was designed to reach th[at] goal.").

75. *See id.* at 106 ("[p]re-emption analysis turns not on whether federal and state laws 'are aimed at distinct and different evils' but whether they 'operate upon the same object.'").

76. *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963).

laws so that compliance with both is impossible.<sup>77</sup> In *Florida Lime*, California enacted a new regulation that no avocados with less than eight percent oil content could be sold in California.<sup>78</sup> However, federal laws permit growers to sell avocados with less than eight percent oil content.<sup>79</sup> The Court reasoned that there was no conflict because Florida growers could successfully comply with both standards by leaving the fruit on the trees longer to increase the fruit's oil content through ripening.<sup>80</sup> The Court stated that a state law may set a higher standard than federal law in some situations.<sup>81</sup>

Here, both federal and state laws govern the employment of minors.<sup>82</sup> However, unlike *Florida Lime*, in which Florida growers could successfully comply with both standards by simply leaving the fruit on the trees for a more extended period, conforming to both state child labor laws and federal regulations would be impossible.<sup>83</sup> The standard in the California law in *Florida Lime* was higher than the federal standard.<sup>84</sup> Thus, growers can comply with the California standard without violating federal law.<sup>85</sup> But the situation here is different. For example, suppose an employer follows the Iowa law to let a 14-year-old child work 5 hours during the school day. In that case, he must violate the federal regulation because it is evident that 5 hours is above the federal limit. Like *Gade*, the new Iowa child labor law interferes with federally prescribed methods for achieving the regulatory goal because Congress protects children by restricting the hours and working environment in which youth under the age of 16

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77. See *id.* at 142–43 (“A holding of federal exclusion of state law is inescapable and requires no inquiry into congressional design where compliance with both federal and state regulations is a physical impossibility for one engaged in interstate commerce.”).

78. See *id.* at 133–34.

79. See *id.* at 134.

80. See *id.* at 143. The Court stated:

As to those Florida avocados of the hybrid and Guatemalan varieties which were actually rejected by the California test, the District Court indicated that the Florida growers might have avoided such rejections by leaving the fruit on the trees beyond the earliest picking date permitted by the federal regulations, and nothing in the record contradicts that suggestion.

*Id.*

81. See *id.* at 144 n.13 (“Rather, the Court simply considered it a well-settled proposition that a State may impose upon imported foodstuffs ‘a higher standard demanded for its consumers.’”).

82. See Betsy Wood & John A. Fliter, *States Are Weakening Their Child Labor Restrictions Nearly 8 Decades After the US Government Took Kids Out of the Workforce*, YAHOO!NEWS (Sept. 4, 2023), <https://tinyurl.com/yjrjmk6s> [<https://perma.cc/6YJC-JH4K>].

83. See *Fla. Lime & Avocado Growers, Inc.*, 373 U.S. at 143.

84. See *id.*

85. See *id.* at 158.



may work.<sup>86</sup> Likewise, the Ohio child labor laws, if enacted, will also impede the federal methods to protect children since they allow 14 to 15-year-old children to work later than the federal limits.<sup>87</sup> Furthermore, the new Arkansas law directly conflicts with federal law, which requires employers to obtain proof of age from any employee.<sup>88</sup>

Since the FLSA sets a floor on wages, hours, and child labor standards, state laws should provide more protection than federal statutes mandate rather than offer less.<sup>89</sup> Based on the holding of *Gade*, federal child labor law should preempt the state-relaxed standard because the state standard is weaker than those provided in federal regulations.<sup>90</sup>

b. Relaxing the Child Labor Law Interferes with the Purpose of the FLSA

Additionally, loosening child labor laws undermines the intent and policy objectives of the FLSA. The child labor regulations in the FLSA were enacted to ensure that when young people work, the work is safe and does not jeopardize their health, well-being, or educational opportunities.<sup>91</sup> However, the objective of states in relaxing their child labor laws is to address labor shortages, which may inadvertently impact education and health, thus impeding the goals of federal regulation.<sup>92</sup>

In *Egelhoff v. Egelhoff*,<sup>93</sup> the Court held that federal law would preempt a state statute if the state statute interfered with the objectives of the federal law.<sup>94</sup> In *Egelhoff*, the insured selected his

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86. *Workers Under 18*, *supra* note 2.

87. See Susan Tebben, *Child Labor Hours Could Change Under Ohio Senate Bill*, OHIO CAP. J. (Mar. 3, 2023, 4:40 AM), <http://tinyurl.com/59me8sue> [<https://perma.cc/T3EE-EV7P>] (“Senate Bill 30, which passed the committee after three hearings and with no testimony against the bill, would allow a 14 or 15-year-old to work until 9 p.m. year round. Current law prohibits the later hours during the school year.”).

88. See 29 C.F.R. § 570.5 (2023).

89. See Jennifer Sherer & Nina Mast, *Child Labor Laws Are Under Attack in States Across the Country*, ECON. POL’Y INST. (Dec. 21, 2023), <https://tinyurl.com/bdfr4m2v> [<https://perma.cc/VH8L-6XSV>].

90. See *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 108–09 (1992).

91. *Child Labor*, U.S. DEP’T OF LAB., <https://tinyurl.com/u43u66fa> [<https://perma.cc/A5TR-3XVQ>] (last visited July 27, 2024).

92. See Harm Venhuizen, *Some Lawmakers Propose Loosening Child Labor Laws to Fill Worker Shortage*, PBS (May 25, 2023, 2:54 PM), <http://tinyurl.com/2s4xwhpr> [<https://perma.cc/L5A2-N47L>] (“Legislators in Wisconsin, Ohio and Iowa are actively considering relaxing child labor laws to address worker shortages, which are driving up wages and contributing to inflation.”).

93. *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001).

94. See *id.* at 150 (“And as we have noted, the statute at issue here directly conflicts with ERISA’s requirements that plans be administered, and benefits be paid,



ex-wife as the beneficiary of a life insurance policy and pension plan offered by his employer, both subject to the Employee Retirement Income Security Act of 1974 (ERISA) regulations.<sup>95</sup> However, the insured's children argued that a Washington statute had revoked the above beneficiary designation because the insured and his ex-wife were divorced at the time of his death.<sup>96</sup> The Washington statute provided that a life insurance policy or employee benefit plan payable or transferable upon death to a former spouse is revoked and treated as though the surviving spouse had predeceased the decedent spouse.<sup>97</sup> The Court reasoned that the Washington statute conflicted with one of the critical objectives of ERISA, which is to have uniformity and standard procedures for administering ERISA plans.<sup>98</sup> Thus, ERISA must preempt Washington's state law invalidating a beneficiary designation of a former spouse in a non-probate asset.<sup>99</sup>

In *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission*,<sup>100</sup> the Court stated that a federal law preempts a state law if the state law will impede the achievement of a federal objective.<sup>101</sup> A California statute imposed a temporary suspension on the certification of new nuclear plants until the State Commission identified a technology for the permanent disposal of high-level nuclear waste, approved by the authorized agency of the United States.<sup>102</sup> The plaintiff, a nuclear power producer, initiated a lawsuit in federal district court to halt the enforcement of this regulation.<sup>103</sup> The plaintiff

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in accordance with plan documents. We conclude that the Washington statute has a 'connection with' ERISA plans and is therefore pre-empted.").

95. *See id.* at 144.

96. *See id.* at 147–48.

97. *See id.* at 141 ("They relied on a Washington statute that provides that the designation of a spouse as the beneficiary of a nonprobate asset—defined to include a life insurance policy or employee benefit plan—is revoked automatically upon divorce.").

98. *See id.* at 142. The Court stated:

The statute thus implicates an area of core ERISA concern, running counter to ERISA's commands that a plan shall "specify the basis on which payments are made to and from the plan," § 1102(b)(4), and that the fiduciary shall administer the plan "in accordance with the documents and instruments governing the plan," § 1104(a)(1)(D). The state statute also has a prohibited connection with ERISA plans because it interferes with nationally uniform plan administration.

*Id.*

99. *See id.* at 152.

100. *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190 (1983).

101. *See id.* at 220 ("It is well established that state law is preempted if it 'stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.'").

102. *See id.* at 197.

103. *See id.* at 198.

claimed that the law was preempted by the Atomic Energy Act of 1954 (AEA) under the Supremacy Clause of the Constitution.<sup>104</sup> The Court reasoned that since the rationale behind the California law is economic in nature and not aimed at radiological safety, it conflicts neither with the objective of the AEA nor the judgments of the Nuclear Regulatory Commission.<sup>105</sup> Thus, the California law was not preempted.<sup>106</sup>

Under the FLSA, Congress established specific conditions for child labor because oppressive child labor was deemed immoral, with children frequently working at the expense of their health and education.<sup>107</sup> Here, unlike *Pacific Gas*, the loosened state child labor law will interfere with the purpose of the FLSA because lawmakers sacrifice children's health and education to fill the labor shortage.<sup>108</sup> Advocates for legislation permitting minors to work extended hours assert that it addresses economic necessities and provides an opportunity to cultivate responsibility and financial literacy.<sup>109</sup> The primary objective is not to deviate from the federal child labor regulations, even though they also solve the state's labor shortage.<sup>110</sup> However, solving the state's labor shortage inherently conflicts with protecting children's education and safety. For example, Iowa's new law, which allows 15-year-old children to work 6 hours during the school day, will impact their education because the extra 3 hours above the federal limit might be their study hours.<sup>111</sup> The certificates of age, which were used to carry out the objective of the FLSA, will be interfered with because Arkansas erases this provision from their child labor law.<sup>112</sup> In addition, the new Iowa child labor law, which permits 14–15-year-old children to work in certain dangerous situations, will threaten children's health.<sup>113</sup>

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104. *See id.*

105. *See id.* at 214 (The Court stated the statute was not preempted by congressional regulation of the field of nuclear safety).

106. *See id.* at 223.

107. CONG. RSCH. SERV., R42713, THE FAIR LABOR STANDARDS ACT (FLSA): AN OVERVIEW 2 (2023).

108. *See Thirsty's, Inc. v. U.S. Dep't of Lab.*, 57 F. Supp. 2d 431, 434 (S.D. Tex. 1999); *see also* Wiseman, *supra* note 53, at 64.

109. *See* Kaitlyn Radde, *Child Labor Violations Are on the Rise as Some States Look to Loosen Their Rules*, NPR (Feb. 26, 2023, 7:05 AM), <https://tinyurl.com/35hsms39> [<https://perma.cc/TZF4-NNR5>].

110. *Id.*

111. *See* IOWA CODE ANN. § 92.7 (West 2023); *see also* Al Jazeera Staff, *supra* note 32.

112. 29 U.S.C. § 212(d) ("In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age.").

113. *See* Robin Opsahl, *Federal Officials: Iowa Child Labor Law Conflicts with National Restrictions on Dangerous Workplaces*, IOWA CAP. DISPATCH (Sept. 1, 2023, 4:04 PM), <http://tinyurl.com/2n3m74v7> [<https://perma.cc/XJ7Z-CNU3>].

Thus, according to the holding in *Egelhoff*, the loosened state child labor law should be preempted by federal law.

2. *The Loosened State Child Labor Law Should Be Nullified Due to the Conflict Preemption*

Since adhering to both state child labor laws and federal regulations would be impractical, and relaxing the child labor law undermines the intent of the FLSA, the relaxed state child labor laws of Iowa and Arkansas should be invalidated.

In *Lorillard Tobacco Co. v. Reilly*,<sup>114</sup> the Supreme Court made clear that the preemptive effect of the Federal Cigarette Labeling and Advertising Act (FCLAA) was to nullify Massachusetts tobacco advertising regulations.<sup>115</sup> A Massachusetts regulation prohibited the advertising of tobacco products within 1,000 feet of a school or playground.<sup>116</sup> It also required that places selling tobacco products place advertisements for these items at least five feet off the ground to avoid being at eye level for children.<sup>117</sup> This regulation conflicted with the FCLAA, which prescribes mandatory cigarette packaging and advertising health warnings.<sup>118</sup> The Court reasoned that the Massachusetts regulations would be preempted by the FCLAA when they conflicted because both were concerning cigarette advertising or promotion.<sup>119</sup> As a result of *Reilly*, Massachusetts lost at least the authority to enact regulations substantively identical to those the Court held preempted.<sup>120</sup>

Similarly, in *Rice v. Santa Fe Elevator Corporation*,<sup>121</sup> the Court stated that Congress did more than make a federal act paramount over state law in the event of conflict; it terminated the dual system of regulation.<sup>122</sup> Rice brought suit against Santa Fe for certain violations of Illinois state law, which were administered by the Illinois Commerce Commission (ICC).<sup>123</sup> The Court stated that Congress's goals in enacting the United States Warehouse Act (USWA) would

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114. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001).

115. *Id.* at 537; *see also* Garrick B. Pursley, *Preemption in Congress*, 71 OHIO ST. L.J. 511, 527 (2010).

116. *See Reilly*, 533 U.S. at 538.

117. *Id.*

118. *Id.*

119. *Id.* at 566.

120. *See Pursley*, *supra* note 115, at 527.

121. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947).

122. *Id.* at 234 (“That is to say, Congress did more than make the Federal Act paramount over state law in the event of conflict. It remedied the difficulties which had been encountered in the Act’s administration by terminating the dual system of regulation.”).

123. *Id.* at 221–22.

be defeated by allowing nonconflicting Illinois regulations to supplement the USWA.<sup>124</sup> Thus, the USWA superseded the rules of the ICC.<sup>125</sup>

The overwhelming majority of modern preemption decisions displace state law and regulatory authority to one degree or another.<sup>126</sup> State officials cannot legalize the employment of children within the state because it will continue to be illegal under federal law.<sup>127</sup>

Thus, for Iowa and Arkansas, which have already loosened their child labor laws, the relevant parts that conflict with federal regulations should be nullified.<sup>128</sup> For states in the process of relaxing their child labor laws, such as Ohio and Wisconsin, lawmakers must carefully consider the issue of preemption to avoid the nullification of the loosened child labor laws.

*B. The Education of Minors Is More Important Than Solving the Labor Shortage*

Education is vital for children, not only for fostering intellectual growth but also for equipping them with essential skills for adulthood.<sup>129</sup> However, excessive child labor may be a barrier to education and then trap children in poverty.<sup>130</sup>

*1. Child Labor May Be a Barrier to Education Enrollment*

First, child labor is a barrier to education enrollment.<sup>131</sup> Multiple studies have found that extended work hours adversely affect academic performance.<sup>132</sup>

Supporters of the relaxed child labor laws may argue that stringent child labor laws could impede economic development by forgoing the utilization of inexpensive labor, as children can be employed to occupy low-wage positions.<sup>133</sup> Some people in Arkansas United,

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124. *Id.*

125. *Id.* at 238.

126. See Pursley, *supra* note 115, at 527.

127. See Porat, *supra* note 15.

128. See *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 537 (2001); see also *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 234 (1947).

129. See Radfar et al., *supra* note 10.

130. See *Five Reasons Why Eradicating Child Labor Is Crucial for Education*, *supra* note 9 (“With over 168 million child laborers worldwide, this problem still remains grave. In addition to the disadvantages faced by many workers in poorer countries, such as hazardous working conditions, long hours, lack of mandated leave, etc., child laborers are denied a fundamental human right: the right to education.”).

131. See *Five Reasons Why Eradicating Child Labor Is Crucial for Education*, *supra* note 9.

132. NAT’L RSCH. COUNCIL, PROTECTING YOUTH AT WORK 115–20 (1998).

133. See Max McCoy, *Column: After a Century, States Are Loosening Child Labor Laws. Where’s the Outrage?*, MICH. ADVANCE (Sept. 7, 2023, 3:56 AM), <http://>

which is Arkansas's first immigrants' rights organization, even suggest that students aged 13 to 14 drop out of school and enter the workforce directly.<sup>134</sup> However, this argument fails to recognize that the loss of education due to child labor hampers a country's ability to achieve sustained economic development.<sup>135</sup> Research has shown that primary and secondary education significantly enhance the productivity of human capital (the knowledge, skills, and health that people invest in and accumulate throughout their lives) and contribute to economic development.<sup>136</sup> Moreover, substantial evidence suggests that child labor impedes a country's social and economic progress because economic growth is hampered when the human capital of the country remains underdeveloped.<sup>137</sup> Child labor laws aim to shield children from engaging in hazardous work environments and ensure their access to education.<sup>138</sup> Thus, states should not relax their child labor laws just to solve the short-term labor shortage, as it could hinder economic development in the long term.

## 2. *Child Labor May Trap Children in Poverty and Have Side Effects on the Next Generation*

Second, child labor may trap children in poverty and have side effects on the next generation.<sup>139</sup> Children engaged in the labor face limited opportunities to access education, hindering their ability to attain higher-paying employment opportunities as adults.<sup>140</sup> Consequently, an individual who commenced work during childhood

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[tinyurl.com/2p8yjns7](https://tinyurl.com/2p8yjns7) [<https://perma.cc/N2LQ-KHG4>] ("Why would companies risk such hefty sums for violating child labor laws? Because it might be cheaper in the long run to pay the fines and keep employing children for lower wages than they could pay adults.").

134. See Figueroa, *supra* note 16 ("Josh Price with the nonprofit immigrants' rights group Arkansas United said the language allows schools to recommend that a student in eighth grade — about 13 to 14 years old — can drop out of school and go straight to work instead.").

135. See Eric V. Edmonds & Caroline Theoharides, *Child Labor and Economic Development*, HANDBOOK LAB., HUM. RES. & POPULATION ECON. (Nov. 18, 2021), <http://tinyurl.com/3bcrjcxn> [<https://perma.cc/4MCH-CFL3>] ("Working children are both a cause and a consequence of a lack of economic development. Widespread child employment dampens future economic growth through its negative impact on child development and depresses current growth by reducing unskilled wages and discouraging the adoption of skill-intensive technologies.").

136. See Anjali Garg, *A Child Labor Social Clause: Analysis and Proposal for Action*, 31 N.Y.U. J. INT'L L. & POL. 473, 478–79.

137. *Id.*

138. See Figueroa, *supra* note 16 ("The laws are designed to prevent injury, and they're also designed to protect a child's ability and opportunity for education.").

139. *Five Reasons Why Eradicating Child Labor Is Crucial for Education*, *supra* note 9.

140. *Id.*

may become entrenched in a low-wage and perilous occupation indefinitely, thereby failing to enhance both their economic status and that of their current or prospective family.<sup>141</sup>

Supporters of the relaxed child labor law may argue that child labor is necessary for the economic survival of families who suffer from extreme poverty.<sup>142</sup> Empirical data, however, does not support this argument.<sup>143</sup> Although studies have shown that children can contribute up to 20 percent of household income in impoverished areas, further research reveals that, in practical terms, child labor does not boost household income.<sup>144</sup> Instead, it typically suppresses adult wages and exacerbates adult unemployment rates.<sup>145</sup>

Furthermore, parents who entered the workforce early at the expense of their education are more inclined to encourage their children to follow a similar path.<sup>146</sup> In fact, studies have found a statistically significant negative correlation between child labor rates and adult literacy levels; as adult literacy increases, child labor decreases.<sup>147</sup> Thus, loosening child labor laws will have a long-term side effect on education in one country, not only for the children themselves but also for the next generation.

Some argue that low-income families would be even more impoverished without the additional financial contribution of children.<sup>148</sup> The absence of money will deprive them of essential needs such as food and shelter, thereby reducing their survival rate.<sup>149</sup> However, this argument is untenable. As discussed above, the loosened child labor laws will interfere with schooling and limit children's studying hours. Even though relaxed child labor laws may cause financial contribution in the short term, poor academic performance may put the next generation in poverty.<sup>150</sup> Thus, to end this poverty cycle, students need education.<sup>151</sup>

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141. *Id.*

142. *See* Garg, *supra* note 136, at 480.

143. *See id.*

144. *See* Timothy A. Glut, Note, *Changing the Approach to Ending Child Labor: An International Solution to an International Problem*, 28 VAND. J. TRANSNAT'L L. 1203, 1208 (1995) (citing a UNICEF study in Latin America which found that the proportion of income contributed by children to the household rarely exceeds 10–20%).

145. *Id.*

146. *Five Reasons Why Eradicating Child Labor Is Crucial for Education*, *supra* note 9.

147. *See* Garg, *supra* note 136, at 483.

148. *See* Radfar et al., *supra* note 10.

149. *See id.*

150. *See id.*

151. *See* Wiseman, *supra* note 53, at 64.



*C. The Health and Safety of Children Will Be Endangered*

*1. The Health of Children Will Be Endangered by Work Exhaustion*

The child labor regulations in the FLSA were enacted to ensure that when young people work, the work is safe and does not jeopardize their health, well-being, or educational opportunities.<sup>152</sup> Although extending working hours may not directly affect children's health, it may indirectly influence children's health through sleep deprivation.<sup>153</sup>

Adequate rest is necessary to restore physical strength, release pressure, and maintain health.<sup>154</sup> If states allow children to work later, children's sleep hours will be consequently reduced. For example, suppose the child labor laws are loosened as planned in Ohio. In that case, some employers may require child employees to work until nine p.m.<sup>155</sup> After work, they still must do homework or review class materials. Their sleep time will be shortened. Insufficient sleep can have adverse effects on children's long-term health.<sup>156</sup> When children are tired, they might get frustrated or lose their temper more easily.<sup>157</sup> Moreover, sleep deprivation can adversely impact memory function.<sup>158</sup> Despite adult workers enduring similar conditions with late hours, children are disproportionately affected due to their physical and psychological immaturity.<sup>159</sup> This leads to severe developmental and health repercussions for children.<sup>160</sup> However, child employees

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152. See *Child Labor*, *supra* note 91.

153. See Walker, *supra* note 57 ("Inadequate sleep can lead to countless negative health consequences that impact students' ability to learn.").

154. See Jenna Fletcher & Thomas Johnson, *Why Sleep Is Essential for Health*, MED. NEWS TODAY (Dec. 19, 2023), <https://tinyurl.com/46s4hfwk> [<https://perma.cc/Q64Y-GSG2>] ("Sleep is important for maintaining optimal health and well-being. Like exercise and a balanced diet, getting enough sleep may help prevent a range of health issues, including heart disease and depression.").

155. *New State Laws Are Rolling Back Regulations on Child Labor*, *supra* note 3.

156. See Peg Rosen & Elizabeth Harstad, *4 Ways Lack of Sleep Affects How Kids Learn*, UNDERSTOOD, <https://tinyurl.com/3d7pdz6r> [<https://perma.cc/E8CW-7Y53>] (last visited Oct. 25, 2023) ("Lack of sleep can make it harder for kids to learn. It's harder for kids to focus when they're tired. Sleep-deprived kids can be moody or have trouble with self-control.").

157. See *id.* Here, Rosen further explains:

Kids can get moody or silly when they're tired. They may have less self-control than they usually do. And they might get frustrated or lose their temper more easily. Having a shorter fuse may cause them to give up on homework or tests. And if they lose their temper, they might end up in the principal's office instead of the classroom.

*Id.*

158. *Id.*

159. See Garg, *supra* note 136, at 476.

160. *Id.*



have no choice but to follow their employers' instructions when they need money and work experience. In short, children work at the expense of their physical development.<sup>161</sup>

A group of scholars conducted a survey utilizing a self-administered questionnaire to examine the adverse effects of sleep deprivation on children's health.<sup>162</sup> All participants were in the 8th and 10th grades at school; the mean age was 14.9 years old.<sup>163</sup> Consequently, fatigue (reported by 39 percent of the students) and headaches (22.2 percent) emerged as the most common complaints among adolescents experiencing inadequate sleep.<sup>164</sup> Moreover, pain complaints, including back and shoulder pain, impacted approximately 24 percent and 19.7 percent of the students, respectively.<sup>165</sup> Similar percentages were observed in emotional symptoms such as sadness, irritability, and nervousness.<sup>166</sup> The American Medical Association, the U.S. Department of Health and Human Services, and the American Academy of Pediatrics all regard chronic sleep deprivation in adolescents as a public health concern.<sup>167</sup>

In adolescents, inadequate sleep can have long-term effects on academic performance and mental health.<sup>168</sup> First, insufficient sleep impacts children's cognitive abilities.<sup>169</sup> It can temporarily impair the region of the brain that manages organization, planning, and problem-solving.<sup>170</sup> Second, children who lack adequate sleep may be easily distracted and struggle to concentrate on their schoolwork.<sup>171</sup> Third, lack of sleep can have a negative effect on memory.<sup>172</sup> Additionally, inadequate sleep can hinder the formation and retention of long-term memories.<sup>173</sup>

Currently, despite restrictions on the number of hours children can work during school days, they frequently experience fatigue and exhaustion, leading to difficulties concentrating on their

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161. See Radfar et al., *supra* note 10.

162. See Teresa Paiva et al., *Sleep Deprivation in Adolescents: Correlations with Health Complaints and Health-Related Quality of Life*, 16 SLEEP MED. 521, 523 (2015).

163. See *id.*

164. See *id.* at 526.

165. See *id.*

166. See *id.*

167. See Danielle Pacheco & Nilong Vyas, *Children & Sleep: An Introduction to the Importance of Sleep in Children & How to Help Them Sleep Better*, SLEEP DOCTOR (Nov. 8, 2023), <https://tinyurl.com/bdcvd4de> [<https://perma.cc/4FN5-B5A8>].

168. See *id.*

169. See Rosen, *supra* note 156.

170. See *id.*

171. See *id.*

172. See *id.*

173. See *id.*

schoolwork.<sup>174</sup> Thus, states should not release their child labor laws to allow children to work more hours because the health of children will be endangered by work exhaustion.<sup>175</sup>

## 2. *The Safety of Children Will Be Endangered by Working in Hazardous Conditions*

As mentioned above, youth under 16 may not work in certain hazardous occupations.<sup>176</sup> The purpose of the FLSA's child labor provisions is to protect children from being injured during their employment.<sup>177</sup> However, the recent Iowa law allows 14 and 15-year-olds to engage in "momentary work" within a meat freezer, which is expressly prohibited by federal law.<sup>178</sup> At least 11 states have introduced laws easing child labor regulations for dangerous jobs.<sup>179</sup> According to the Occupational Safety and Health Administration, child workers in meatpacking plants suffer higher rates of injury and fatalities.<sup>180</sup> This change may endanger the safety of the children.

Federal investigators disclosed in February that over 100 children, some as young as 13, were unlawfully employed at meatpacking plants across 8 states.<sup>181</sup> Some children suffered injuries.<sup>182</sup> For example, a 16-year-old child died after being drawn into machinery at a poultry plant in Mississippi.<sup>183</sup> He got this job by using the identity of a 32-year-old man.<sup>184</sup> This case underscores not only the significance of safeguarding children's safety but also emphasizes the importance of the age certificate mandated by the FLSA.<sup>185</sup> In states such as Arkansas, where there are attempts to repeal the certificate of age requirement, children's safety could be jeopardized as employers

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174. Shelley Davis, *Child Labor in Agriculture*, ERIC DIGEST (Feb. 1997), <https://tinyurl.com/4dfpd57u> [<https://perma.cc/GA4X-4JLZ>].

175. See Radfar et al., *supra* note 10.

176. See 29 C.F.R. § 570.33 (2023) ("The following occupations, which is not an exhaustive list, constitute oppressive child labor within the meaning of the Fair Labor Standards Act when performed by minors who are 14 and 15 years of age . . .").

177. *Workers Under 18*, *supra* note 2.

178. See IOWA CODE ANN. § 92.5 (West 2023).

179. See Ferdowsian, *supra* note 59.

180. See *id.*

181. See *id.*

182. See *id.*

183. See Laura Strickler et al., *A Minor Who Died in a Poultry Plant Accident Got the Job with the Identity of a 32-Year-Old, Company Confirms*, NBC NEWS (Dec. 18, 2023, 6:02 AM), <http://tinyurl.com/2r348wbv> [<https://perma.cc/7RV5-V3Z8>].

184. *Id.*

185. See 29 C.F.R. § 570.5 (2023).

may overlook age restrictions and allow them to work in hazardous occupations.<sup>186</sup>

In conclusion, to ensure the safety of children, states should refrain from loosening their child labor laws to permit employment in hazardous occupations or repealing the age certification requirement provided by the FLSA.

#### CONCLUSION

In summary, it is essential for states not to relax their child labor laws, ensuring that children do not work for longer hours than the federal limit or under certain dangerous conditions. In states like Iowa and Arkansas, where the child labor laws have already been relaxed, any conflicting provisions that deviate from federal regulations should be preempted. This is crucial because compliance with both state and federal laws would be impossible, and loosening child labor laws contradicts the purpose of the FLSA. Federal laws that offer greater protection for young workers should take precedence. Therefore, any conflicting child labor provisions in Iowa and Arkansas should be invalidated.<sup>187</sup> Moreover, lawmakers in states that are considering the loosening of child labor laws, such as Wisconsin and Ohio, should carefully consider preemption issues and policy implications.<sup>188</sup>

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186. See The Editorial Board, *The Dangerous Race to Put More Children to Work*, N.Y. TIMES (Mar. 26, 2023), <http://tinyurl.com/4e8f2zsn> [<https://perma.cc/H CJ2-7TB6>] (“As a recent New York Times investigation documented, children are being widely employed across the country in exhausting and often dangerous jobs working for some of the biggest names in American retailing and manufacturing.”).

187. See Pursley, *supra* note 115, at 527.

188. See *Five Reasons Why Eradicating Child Labor Is Crucial for Education*, *supra* note 9.