January 29, 2011

Mr. Jeffrey Shapiro
New York State Department of Labor
State Office Campus
Building 12, Room 509
Albany, NY 12240

Re: Proposed Rule Making Regarding Young Performers

Dear Mr. Shapiro,

Pursuant to the Proposed Rule Making published in the New York State Register on November 10, 2010, our organization, BizParentz Foundation, would like to submit the following comments for your consideration.

WHO WE ARE

BizParentz Foundation is the largest national non-profit corporation providing education, advocacy, and charitable support to parents and children engaged in the entertainment industry. Founded in 2004, the organization promotes a positive public image regarding child performers and educates the public regarding the safety and rights of child performers including child labor laws and regulations. BizParentz is a collaborative, volunteer effort of **parents**, **government**, and **industry** organizations and is the only organization with a national scope that includes union and non-union members. Parents actively help others by bringing legislative issues to the forefront, researching industry solutions, writing educational articles, and planning special events. Industry organizations provide the Foundation with a variety of resources including facilities and services. BizParentz speaks for over 5000 families and has the experience of actually working on sets and in theatres every day. Where others may suggest philosophical solutions, BizParentz can advise you, in detail, how things actually play out in real life.

BizParentz has sponsored and/or assisted legislators in the drafting of child performer legislation in California, Louisiana, Florida and New Mexico. We are asked to assist legislators so often that we wrote a publicly accessible article on our website to provide lawmakers with a template for how to structure a child performer law (see : http://www.bizparentz.org/entertainmentlaws/howtobuildalaw.html, attached document). We once again encourage the DOL to read this article as it contains specific language and could have prevented many of the problems we are seeing in the current proposed NY Rules.

The co-founders of our organization have offered to assist your department in the past, all the way back to 2003 when the Child Performer Education and Trust Act was in the process of being drafted. We knew then that there were things that needed adjusting. We were advised that details missing from the law at that time would be created at a later date, and we looked forward to further amendments. We are shocked to find that 7 years later, Rules are being proposed that would not simply clarify the legislation, but would drastically change the face of the industry for young performers in New York.

After the Rules were published in the Register, BizParentz began to work closely with Child Performers Coalition (www.childperformerscoalition.org). We fully support the Child Performers Coalition as the authoritative local voice about this issue. We jointly sponsored a petition about the Rules and that petition boasts more than 700 signatures today. We encourage the DOL to read the comments left by the signers there as they reflect the voices of the workers you are attempted to "protect". In addition, we strongly encourage you to read the legal briefs at the CPC website, which address most parent concerns.

While much of the BizParentz direct experience and industry involvement is in California, we do not want to represent that we speak wholly in favor of the California law structure. We have the luxury of experience and knowing what does not work well, primarily in the area of the Trust Accounts. However, as it was communicated by us in 2003, there are many provisions that are unique to either California or New York law, where both states claim to cover their residents as well as anyone who works in the state. It is a fairly common occurrence for children to travel to a different state to work, and having conflicting laws creates confusion and jurisdictional issues. There is an unintended consequence when the 2 states with the most industry business have dissimilar provisions governing child performers.

SUMMARY of BIZPARENTZ POSITION

While we share your offices' concern for the well-being of young performers, BizParentz strongly opposes the content of the Rules as they are currently proposed. We encourage you to table the Rules and appoint a working committee who would be charged with making recommendations for both Rules and Amendments to the Child Performer Education and Trust Act. This committee would need to create sub-committees for specific subjects such as Education, Trust Accounts, Work Hours, Model Regulation, Reality TV, etc. We believe all the regulations could apply to all performers, with the exception of work hours for live theatres, where additional considerations would need to be applied. It is our opinion that new Rules could be drafted in just a few meetings, if the correctly educated stakeholders were in the room. We are confident that everyone speaking out about this issue desires the same resolution – workable Rules that provide reasonable protections without overburdening DOL staff, employers, and parents needlessly.

We are horrified that not a single professional child performer or their parent was notified of, or involved in the Rule Making process, despite the fact that the DOL has access to all permit holder's addresses. The specific proposals will be burdensome to production and will endanger young performers rather than protect them. It appears that the proposed Rules are born out of good intentions, but like Frankenstein's monster, are a mish-mosh of California law, SAG Contract provisions, Equity contract provisions, a mis-named committee about eating disorders, and the influence of those who wish to profit from young performers. Like the monster, it will not work in real life, and will drive the industry away from New York.

PROCESS and PUBLIC INPUT

It appears that the current Rules are the misguided attempt to merge the Child Performers Advisory Board (aka Eating Disorder Committee) created by AB4250 (Rivera), with the Child Performers Education and Trust Act, which never had Rules created. This is unacceptable because AB4250 did not indicate an intention to regulate child actors. The intent of that bill was to regulate child models

and dancers, for whom there was a legitimate concern about eating disorders. It is a complete mis-assignment of law, and bad public policy to allow that committee to influence a total different law, and a totally different population of workers (child actors).

The Child Performers Advisory Board (aka Eating Disorder Committee) was promulgated very specifically in the AB4250 law, and those appointed had little or no knowledge of the child actor world. It was painfully obvious watching the committee hearings that several people in the room realized that the committee was mis-directed. Two employer representatives, a modeling photographer, and a dance company director noted that neither dancers nor models were covered under the Child Performer Work Permits, so their role on the committee was moot. Another committee member, Alan Simon of On Location Education, was not mandated by the original bill, but still was able to insert clauses in the Rules that would benefit his private business...this happened because the correct people were not in the room! No one in that room had adequate knowledge of Child Performers, their needs, their schedules or their workplace issues. As a vivid example, it was alarming and disheartening to hear the committee be deceived into thinking that permits were issued once a year and that there was currently no physical required. No one, including DOL staff, corrected this most obvious of mis-statements!

It was shocking to hear the Child Performer Committee discuss our children as if they were wards of the state, which needed intervention. The reality is that child performers are WORKERS and they have rights as citizens. They also have parents who are caring for them in a perfectly adequate manner. There is no allegation of wrong doing by any performer or parent, nor is there any evidence of the eating disorders in the actor community. Please, from this point forward, remember that working children are primarily citizens who are employed. They are not abused children, foster children, or wards of the court.

Most importantly to our organization, it is unconscionable that none of the affected citizens have had input into the rules. No professional child actors, no parents. The DOL did not even do a simple mailing to the children who currently hold permits in NY. These are the workers the DOL is supposed to be protecting, but they were not even consulted before the Rules were written. Is there any other situation where the DOL regulates an industry but does not speak to the affected parties?

Since there has been so much misinformation spread around as the Rules were created, please allow us to clarify some "Givens", or assumptions, which affected the development of the Rules.

FACTS

--Child Models are not regulated in New York. Yes, they may get a Model Permit from the Education Department (not the DOL), but it is an antiquated system that serves only to give the child an excused absence from public school. Few models get one, and there is no requirement for employers to ask for one. So there is no actual regulation. As a result, the permit process is largely ignored by all parties.

--The current proposed Rules do not define models as part of the affected group. In other words, models will CONTINUE to be unregulated in New York.

--According to a press release from the New York State Task Force on Food, Farm and Nutrition Policy, AB 4250 was intended to prevent eating disorders. It was developed as a response to fatal eating disorders in the runway modeling industry. No mention of actors was made at all, other than the mis-naming of the committee as a "Child Performer" committee. It seems that this should have

been recognized by the Judiciary Committee as AB4250 made it through congress and the process should have been halted and re-directed at that time.

--There is very little crossover between children who do print/runway modeling and those who are performers in live theatre, TV and film or commercials. It is a different population of children, with different needs, and different employers -- a totally separate industry.

--Dancers are also not usually regulated by the Child Performer Education and Trust Act. Why? Because the professional dance companies operate as non-profit schools. The students there might perform in a professional sense, but they are generally compensated with an educational stipend (scholarship). Most of the NY ballet companies do not "hire" dancers until they are 18. The currently proposed Rule specifically exempts educational entities like dance schools from the law.

--There is ZERO evidence of a high rate of eating disorders among the child actor community. No studies have been done, no anecdotal stories of deaths from anorexia have been told. Yet, the Rules will regulate child actors and NOT apply to any of the groups with higher rates of eating disorders such as runway models or dancers.

--Social services provisions already exist to protect any child (even dancers, models, and actors) who is suspected of being abused, uneducated, or malnourished. The Child Protective Services Act of 1973 allows anyone in the child's life to report a situation they feel is dangerous to the child. See http://www.ocfs.state.ny.us/main/cps/

-There is currently NO PHYSICAL REQUIRED for a child performer permit. It was clear from the committee hearings that the committee members made their recommendations based on the misinformation that all children were required to have a physical in order to get a Child Performer Permit. This is NOT TRUE. The committee members seemed to feel they were just adding an eating disorder screening to an already existing system of physicals. This is NOT TRUE. Currently, Child Model Permits require a physical, but as stated earlier, few people are actually using that system and it only applies to public schools where one physical a year is required of all students for enrollment purposes. For Child Performer Permits, nothing additional is required. Also, children who are attending a private school, are schooled out of state, or who are homeschooled may not have yearly physicals for school.

--Child Performer Work Permits are renewed every six months. One temporary, 15 day permit is allowed for a lifetime. After that, families must renew or risk being "unemployable".

--The current "Child Performer Trust Account" requirements in NY do not actually protect children's money in any way. This is because:

1. New York never designated the child's earnings as the child's own property. It legally belongs to the head of household. California is the only state that specifically designates a child actor's earnings to belong to them, and not their family.

2. New York did not require that the "Child Performer Trust Account" be blocked. A parent is the trustee of the child's funds and can make withdrawals on the child's behalf at any time.

Please be clear: there is no protection of the child actor earnings in New York, no preservation at all. It is a shell of a requirement and has been since 2003.

--The current "Child Performer Trust Account" provisions have instead guaranteed that a portion of many children's earnings will go missing. As a result of the "Child Performer Trust Account" law,

employers are withholding 15% of the gross wages, but often send it to the State Comptroller's office where it is placed in the “Child Performer’s Holding Fund”. This happens for a host of reasons. Without addressing those here, it is important to note that children are denied ownership of their earnings through no fault of their own. And the Comptroller's office is not happy about holding tens of thousands of dollars in the Fund. We understand they have asked repeatedly for a legislative solution. The new Rules do nothing to rectify this situation, and in fact make the problem worse by continuing to allow a staggered system of payment requirements for wages and for wages withheld for deposit into a "Child Performer Trust Account”.

Since 2004, when the NY Trust Account system started, $375,000 of child performer’s earnings have been turned over to the Comptroller, rather than being deposited into the performer’s trust account, effectively “lost”. To be clear, that amount is just the 15% of the gross earnings that was withheld. The gross earnings for that amount of withholding is $2,500,000. That is the scope we need to consider when realizing how many people were affected by a system that did not work. We would anticipate a learning curve, whereby the amount of money that needed to be turned over to the Comptroller would decrease over time. However, fiscal year 2010 is on the path to being the highest year yet.

-- Predators are rampant in the kid acting world. Unfortunately, there is no requirement for people who work with a child in a professional performance setting to be fingerprinted or background checked in any way. This is not public school, scouting, or your local child care center where such expected standards exist. The entertainment industry draws in sexual predators in particular, because they know they can be alone with children with a minimum of suspicion. There have been dozens of arrests in the last few years, including directors, set teachers, managers, publicists and photographers of children. This is probably the #1 safety issue for child performers today. For anyone to limit, or dismiss a parents role in being within sight and sound of their child at all times at the workplace, is absolutely intolerable.

--Only child actors are exempt from the Fair Labor Standards Act in the Newsie Exemption. That is why there are no federal regulations and why individual states must make their own laws to regulate child actors. Children in Reality Television Shows are not professional actors. They are not admitted into labor unions for actors, given scripts to memorize, etc. It is our contention that children on reality television ARE working, but not as actors. As such, they are covered under the Fair Labor Standards Act, and normal child labor law provisions should apply to them. This would give them MORE protection than is currently being offered in the New York Rules.

FINANCIAL IMPACT

We believe, based on similar experiences in California and in other states, that the NY Rules will have a substantial adverse impact on the economy. This negative impact will exhibit itself in several ways:

--Runaway production means lost jobs. We've seen it California (currently the most regulated state for child actors), over and over again. Producers for kid-centric projects absolutely avoid California if they can. Disney Channel, for example, shoots a large portion of their films in Utah, even though none of the principal actors live there. It's cheaper to fly them in, than it is to pay hundreds of background actors under the restrictive California child law. While New York likes to hang its hat on Broadway, the State should realize that significant economic impact is produced by the other sectors of the entertainment industry that are more mobile.

Producers will go to the most business-friendly, economically advantageous environment. In NY, it would seem that the very accessible states of New Jersey and Connecticut, for example, are just a

train ride away. They not only have filming incentives, but they offer savings of at least $1000 per day in production costs. (the cost of a responsible person, loss of work hours, etc). Not to mention, they avoid the hassle of administrative nightmares like delayed work permits for kids who must submit 12 different documents. Residual economic impact from this loss of jobs -- hotels, acting training businesses, transportation, and set construction businesses would be huge.

--Estimated projected costs to the state and to regulated persons. Again, we see a significant negative impact on workers, employers, and on the DOL itself. The statements by the DOL that studies were not done because the impact of the Rules is "minimal" are ludicrous. Here is a rough estimate of costs for the DOL, the workers and the employers:

DOL: Requiring 12 documents for a Child Performer Permit means a total of 154,800 documents to be reviewed. If they only spend 3 minutes on each document, that's still 7,740 work hours, or nearly 4 full time workers. If the state pays each clerk $40,000 a year plus benefits, that's about $186,200 per year in costs to the department. That's not counting any enforcement of the Rules at all.

Workers: Two physicals a year are now required. Even if a family has health insurance (many creative industry families do not, and children rarely qualify for union insurance), most companies only cover the cost of one physical a year, and the additional eating disorder screening would likely cost an additional fee. A quick BizParentz survey of 20 families tells us that child physicals in New York average $400 each. So that's $800 in additional costs for a work permit...a defacto "fee" before a child even works.

Additionally, the short history of the Child Performer Education and Trust Act shows us that child worker money is being taken from them and deposited into the Comptroller's office. Since 2004, $375,000 has flowed through the Comptroller's office, which is just 15% of $2.5 million in wages that were affected by this law. Effectively, this is "lost" money. Sure, it may be found, if the performer can play Sherlock Holmes and figure out who might be in possession of their wages...the employer? Actor's Fund? The union unclaimed funds departments? The Comptroller? All this is a huge administrative burden for the parents as they spend time tracking down each paycheck. 15% of every child's paycheck is at risk.

Employers-- Fees for each employer for permits, the addition of a designated responsible person, and the loss of overtime hours currently used by employers would cost thousands PER DAY. We encourage the State to investigate the exact numbers of production days for projects involving children in New York and estimate what additional costs they might incur under the new Rules, besides the basic permit costs.

SUGGESTION: COMMITTEE

We believe that the DOL should appoint a committee to address child performer and model issues. It is likely that some of the provisions would require an amendment to the current child performer law, (such as the inclusion of entire classes of workers who have been left out of the legislative process, ex. requiring regulation of models and reality show performers, if that continues to be the intent). It is also likely that some regulations would be appropriately implemented through the current Child Performer Education and Trust Act through the development of Rules.

The Committee Should have Sub-Committees including but not limited to:
Education
Trust Accounts

Work Permits and Employer Responsibilities
Model Regulation
Reality TV Regulation
Safety and Supervision (sight and sound, responsible person, wranglers)
Work Hours

More detail and suggestions for the makeup of the committee and sub-committees can be found in our attached document.

CONCLUSION

Again, BizParentz strongly suggests that the DOL table the currently drafted rules and appoint a working committee of knowledgeable stakeholders. We believe this tactic will create the best, most workable regulations for child performers and models. We would be more than happy to participate in any appropriate committee.

However, since we are not confident that the DOL will offer us input into a potential reworking of the rules, we would like to offer very specific comments and suggestions about the Rules as they are proposed today. That detailed document is attached.

It is unfortunate that efforts intended to provide a framework for safety, educational needs, and work hour definitions for child performers has had to be met with much disdain. We urge the New York Department of Labor to move forward and rework the Rules to obtain a positive outcome for the employees of New York. When supported with input from appropriately knowledgeable entities, we are certain that this can be accomplished with great success.

Sincerely,

Paula Dorn
Co-founder
BizParentz Foundation

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Additional Comment Detail and Suggestions

Regarding Proposed New York Rules

Additional information related to Committees:

Examples of the appropriate make-up of committees might be:

Education: young performers, parents, NY Dept of Education, NY Professional Schools, SAG/AFTRA/Equity (to ensure cohesive flow from union contracts which already regulate schooling) , homeschool advocacy organization, producers from each type of performance venue.

Trust Accounts: employer payroll departments, labor unions, the NY Comptroller's office, The Actors Fund (a charity which also holds "Unclaimed Coogan" funds for children pursuant to California law, parents (as trustees), banks who offer UTMA/UGMA accounts to child actors, BizParentz (we were instrumental in creating the current Coogan (trust account) law in California, which will continue to affect NY through CA owned companies and we are the nationwide experts on Coogan implementation).

After the committee works is done, BizParentz strongly suggests that the DOL notify all the current permit holders by mail of the new Rules and/or Amendments so that ALL affected workers might have the opportunity to share their comments. There is absolutely no excuse for this, since the DOL has addresses for all permit holders.

Comments specific to Rules as currently proposed, line by line

--186-2.1 (a) Absence of Models in Definition We suggest that models be included in the law, understanding that this may require and amendment and a transfer of work permit duties from the Department of Education. Modeling is more in need of regulation than any other area, labor unions do not exist for print/runway models. Every other state includes them in the definition of performer, and we are baffled as to why, in the US city with the most print work, they are conspicuously left out.

--**186-2.1 (1) Reality Show Performers** Children in reality shows are simply NOT actors and throwing a term into a law like "reality show" that will be outdated in a year or two is bad public policy. The term must be defined, and differentiated between documentaries and game shows (which is a huge debate within the industry). As we mentioned earlier, there are already laws existing to regulate children in reality shows if they are NOT designated as actors, therefor adding them to this definition is unnecessary and would provide LESS protection for those children. Our position at BizParentz, after having intimate knowledge of many reality shows involving children is that *no child should participate in a reality show*.

--**186-2.1 (3)(v) Student Films** It is inadvisable to exclude student films from these regulations. With third day education, and most student films taking only 2 consecutive days to film, costs are not significant. It is crucial that student film makers learn how to deal with child actors and learn the laws regulating them. Further, it is a safety risk to subject children to the unskilled student filmmakers who tend to take unnecessary risks due to their inexperience. Important regulations like work hours and

basic safety functions should be adhered to-- even in a student film. CA law does include student films, and major universities are also SAG signatories.

--**186-2.1 (b) Definition of a Minor** 18 years old is the age of majority in NY, but we suggest adding "18 years of age or a high school graduate" , since college students are very likely 17 or 18 and are living on their own, with no need for a school permission slip to get a permit, or their parent on set to supervise.

--**186-2.1 (c) Definition of Employer -- Agencies** Agencies cannot be included in this definition as they are NOT the child's employer. Talent agencies are defined elsewhere and regulated and licensed in NY law. The exception could be in modeling situation, but since models are not included in this Rule, it makes no sense here. The definition of employer in CA law should be used. The State should also consider a wider definition that includes the exhibition of a minor for any commercial purpose, whether the minor is paid or not.

--**186-2.1 (l) Group Certificates** This is an absolute abandonment of all child safety provisions for the most vulnerable children and should be eliminated completely. Group certificates ensure that entire groups of children, which could be defined in any loose manner, will not have work hours, education or trust accounts. There is no reason for this function, other than as a "giveaway" to producers. This clause will also undermine the professional background performers by completely eliminating their work since an employer could designate any section of 20 children as a "group". This type of provision does exist in California law, but it requires the group to be pre-identified in some way--i.e. an established marching band or a pre-existing baseball team. Even with that specificity, it is heavily abused by producers and has contributed to the massive amount of unclaimed Trust Account money because those children have no work permits and thus have no education about their responsibilities as workers, nor do their parents. If the State believes in protecting children, why create an unnecessary loophole that allows entire groups of children to be exploited.

--**186-3.2 Permit Applications** The DOL is now asking for a total of 12 separate documents in order for a child to get a work permit. This is ridiculous, burdensome for parents and a bureaucratic nightmare for the DOL staff to handle. It is baffling that the DOL has proposed this massive documentation, but has not requested additional staffers. With over 12,000 permits issued, the DOL staff will need to review and verify a total of 144,000 documents every six months.

Some documents are unnecessary and an invasion of the parents' privacy including a photo ID for the parent, home and business phone numbers. Invasion of the child's privacy include the child's social security number (why would the DOL need that when it would be given to an employer?) and the child's banking information. All of this is identity theft in the making, which is a significant problem in the child acting community.

The DOL does not need this information, since they are not employing the child, nor are they sharing this information with the Comptroller's office, where the child's missing money might be found (to date, the two departments have refused to share information).

One suggestion might be borrowed from California's law: rather than have the banking information submitted to the DOL, who does not need it, require that the trustee statement be ATTACHED to the permit in order for it to be valid. That way, the employer is guaranteed to have the Trust Account information, lessening the possibility that they could claim the parent never opened an account. If the statement is attached to the permit, there are only two options for missing money: the employer worked a child illegally with an invalid permit, or the employer ignored the law and did not deposit the money to the child's account.

Physicals -- this function is nothing less than ridiculous. Many other organizations have expressed the problems with this provision, so we won't revisit them except to say that there is no necessity for physicals in order to be an actor. None. No other state requires it, because it is not necessary for the job and physicians would have no way of judging what kinds of job duties would be required six months in advance anyway. We agree with the other organizations that have expressed extreme opposition to this provision hat will cost parents significant time and money and will not protect children in any way.

--**186.3.2 (11) Education About Eating Disorders** Our organization welcomes any education provided to parents on any subject. Sharing information about eating disorders would be welcomed and we suggest adding more information to parents to help combat actual documented problems within the child actor community such as how to track and retrieve missing Trust Account payments.

--**186-3.5 Child Performer Trust Accounts** As mentioned earlier in our comments, there is a HUGE problem with missing Trust Account money in New York already. Children are not getting paid their earnings, plain and simple. The New York Comptroller has complained repeatedly and still these Rules did nothing to address the problem. Meanwhile, employers are doing what they did in California--the most efficient thing--which is to ignore the law, withhold the money but keep it in their own account to collect interest, and/or make one periodic payment to the Child Performer Holding Fund.

While this is a whole topic unto itself, we suggest several things to slow the flow of lost child earnings:

--require that a trustee statement be attached to the child permit in order for the permit to be valid. this way no employer can say they do not have the information.

--require concurrent payment of Trust Account money and the regular paycheck. The DOL should NEVER, n any circumstance, approve of any deal in payment of a workers' earnings. It doesn’t matter what bank account it is going to...the child's earnings should be paid on time.

--institute a significant fine for employers who do not pay children their earnings in a timely manner and afford the workers a system for filing a claim when their withheld wages are not returned to them via deposit in their “Child Performer Trust Account”.

--institute an information sharing system between the DOL and the Comptroller's office. If the DOL has a permit issued within 6 months, they have fairly recent address contact info for that child. It is unthinkable that one State Department is withholding information needed by another State Department, who is trying to return a worker's EARNINGS to them.

Other Trust Account issues:

--Delete the language about other withholding amounts. No trustee in their right mind would suggest more than 15% because the interest rates on Trust Accounts are so poor. Just declare the amount to be 15%. .

--Exempting Group Certificates from Trust Account withholding is opening a loophole. Why do these children not deserve to have their money protected (if you really believe that this provision protects children's money)? We reiterate: delete the entire function of Group Certificates from this Rule. It is dangerous, it decreases work opportunities for professional performers and it needlessly opens up gaping loopholes in the law. Why would the DOL, who claims to be writing this entire Rule to protect children and their finances, simply allow employers to throw away all child protections by paying $200 and putting 20 kid names on a list.

--**186-4.3 Notification of Use of Child Performers**. This type of function works only for states with very low levels of production. It is simply unrealistic to believe the producers could cast their commercial projects or the background players in a feature film 5 days in advance. What is the function here? The DOL just wants to know what is filming around town? It does not appear that the DOL randomly visits job sites. If this information is really needed by the DOL, perhaps this language could be substituted with a Notice of Intent to Hire Child Performers that would provide the DOL with project name, location and the number of child performers employed. That kind of information IS available 5 days n advance.

Once again, we feel the need to remind the DOL that distributing a child's social security number between employers (and their many staff members) and the DOL staff is an extreme invasion of privacy. Children are WORKERS and deserve the same rights as any other worker. Their social security number should not be shared with any entity, and should only be used by an employer who is paying them. The DOL should not have any need to for it. In this particular case, you are asking an employer to share a number with you, when the DOL already has it in their possession via the work permit process.

--**186-4.4 (a)(1) Parent Responsibilities--Work Permit** Again, we suggest attaching the Trust Account information to the actual work permit and making the permit invalid without it. This closes the currently existing loophole where employers simply say they never received Trust Account info from the parent, and thus didn't deposit the funds. If the Trust Account info is attached to the permit, and the employer must have the permit to employ the minor from Day One, they WILL have the Trust Info and will be compelled to properly pay the child their earnings -- 15% to the Trust Account and 85% to the child. This is consistent with CA law as well -- in CA, work permits are not valid without a Coogan Trustee statement attached and this sentence is printed on the work permit for employers to see.

Additionally, we suggest you adopt part of the CA law that says the employer must give the parent a RECEIPT acknowledging that they received the Trustee statement. The hope was that if employers (and their one-day contracted, temporary staff people) realized that the trustee paperwork was important and that they had to sign for it, they might not claim to "lose" it as often.

--**186-4.4 (a)(3) Parent Responsibilities -- School Requirements**. We believe it is the parent's right and responsibility to control the schooling for their child. The employer holds responsibility only to allow the environment and time for that education to happen.

However, the concept of "equivalent education" that already exists elsewhere in NY law, really doesn't work for the entertainment industry. It is needlessly vague and the attempt here to add specificity is crossing the line of acceptable. This needs to be deleted, and substituted with language that the parent must bring to the work site 3 hours of appropriate school work for the child. End of story.

The idea that a parent could feasibly meet with a teacher and principal about their educational needs, then share educational information about their child with an employer in advance of the job, is unrealistic logistically.

It is also a huge invasion of privacy and a risk to the child's employment. Imagine, for example, that the child has a learning disability. This information would be shared with the employer in advance, and the employer could quickly decide that a child who is "slow" is not workable for their project. The child will be dismissed, and never know why. Sharing a child's specific educational needs is simply inappropriate in an employment setting.

--**186-4.4 (a)(4) Parent Responsibilities – Health** If these Rules are implemented, this child would have already received a doctor's clearance to work via their two physicals. Forcing a third party (a

parent) to share medical information with an employer of an another is a clear violation of Privacy Act laws and the Americans With Disabilities Act, not to mention unnecessary This function would also not be necessary if the DOL implements the parent right of access to their child and "sight and sound" responsibility for the parent (more on that later).

--**186-4.5 Trust Account Transfers by Employer** This entire section is ridiculous and confusing. It is unconscionable that the Department of Labor, whose primary job is to make sure workers get paid, is endorsing the idea of staggered or late payments to a worker. Please adjust your thinking: money withheld for a mandatory Trust Account is part of a child's EARNINGS. It is not an extra employer benefit. It is not an employer match. Therefore, it should be paid in a timely manner, concurrent with the rest of the child's paycheck.

In relation to 186-4.5 (c), it is unrealistic to believe that an employer will be able to issue a notice of deposit to the parent. This is a foundational problem with the Coogan/Trust Account systems across the country, and probably deserves much more discussion by a committee. The short version is that Trust Account withholdings are being mandated like another payroll deduction (say, social security, or a 401K), but payroll companies and their computer programs do not have the logistics to handle that or even to recognize that an employee is a minor. Most often, the employer will list the deduction in the Misc. section of the regular paycheck for the 85% of the child's money. They will list that they WITHHELD the money, but there is no guarantee that they DEPOSITED it on the other end. We recognize that the withholding and deposit process is somewhat burdensome on payroll entities. Unlike other government payroll tax withholdings, there is no easy system for the withholdings to be deposited. They are unique and individual accounts at various financial institutions and must be handled uniquely. While it would be wonderful to get a notice from the employer, it is one more step that will cost employers money, and one more step that will encourage them to dump the funds, in bulk, at the Comptroller’s office instead.

Perhaps an alternative would be educational videos or statements that might educate parents on their responsibilities as a trustee, and the need to track Trust Account payments to their children's accounts.

--**186-4.5 (d) Timely Transfers to the Holding Fund** There should be little or no cases where a parent has not provided the employer with trust fund account information, IF you attach it to this work permit. Please consider this option to close the hole in your system.

Also, requiring transfers to the Holding Fund at the same frequency with which the child is normally paid is really not optimal. Parents should have the opportunity to investigate paychecks, make sure the amounts are correct, and resolve disputes before any money would be transferred to the Comptroller's office. It should stay with the employer and the employer should be responsible for their employee payments for a short period of time, say 90 days.

For example, when a residual payment for a film is made, the employer cuts checks quarterly and sends them to the union for processing. The employee has no idea the check exists and does not receive it for 2 - 3 months after the check is cut. the union then sends the check to an agent or manager, who also processes it (and causes a delay). THEN the remainder is sent to the actor. At that point, the parent should do the accounting to see the Trust Account funds were withheld at 15% and that they were actually deposited to the child's account. If anything were to be amiss here (and it often is), the parent would call the employer. The employer would tell the employee that they no longer had the Trust Account funds and that they weren't responsible because it already went to the Comptroller's office.

In other words, the current language creates a shell game where parents have to guess where the money went. And the shell game is going to happen before the parents even receive the paystub. The parent is left chasing a small portion of money all over town. The current language also allows the employer to very quickly divest themselves of responsibility for that money.

Please consider extending the time for the employers to deposit to the Comptroller's Office to 90 days from the last day of employment. This will increase the employers responsibility for the funds (they can't just dump and run, rather than do the deposits to each child) , and will allow parents time to do their accounting and deal with the employer directly.

--**186-4.6 Responsible Person** This is one of the most egregious and dangerous aspects of the Rules. In our opinion, there is no instance where a child should not be within sight and/or sound of a parent. This is industry standard in every sector of the entertainment industry except for theatre, and perhaps it is time to change that as well.

Perhaps the DOL needs to be educated on the current issues faced by child performers: predators in the industry are a major concern, since the access to children in the industry is completely unregulated. There have been literally dozens of convictions in the last few years of sexual predators including managers, publicists, actors, directors, photographers coaches and yes, even a set teacher. Most of them had supervision of a child in the workplace.

Most of them are still working in the industry *because they can*. Right now, there is no requirement for people who work with children in a professional performance setting to be fingerprinted or background checked in any way. To imagine that there is such a thing as a "responsible person" who is paid by an employer is ludicrous.

You MUST change this function within the Rules. It will literally make New York a very dangerous place for child actors to work. The designation of a guardian for a child can only be done by a parent. A parent is responsible for their child. Give the parent the right, and give them the responsibility. Clauses in the Rules such as "mutual agreement by the employer and the parent" and "parent MAY act as guardian" are worthless.

We are aware of the logistical problems with Broadway work and the small spaces backstage. We know that the wranglers are currently trying to unionize. We are also aware that it is one of the most dangerous work environments for a child since background checks are not done on anyone in the theatre. Including the wranglers. There is a convicted sex offender of a child working on Broadway right now: James Barbour worked in children's shows and has continued to be embraced and cast by the Broadway community after his conviction. And we are to trust that an employer can designate a "responsible person"? We think not.

Logistically, the "sight/sound" issue can be solved. Perhaps for Broadway, it could be adjusted to be stated "sight OR sound". Broadway shows in this day are technical wonders and things like live streaming to iPhones of a backstage area can be accomplished easily. There is usually a room somewhere in the theatre where parents can watch a monitor without being in the way. In the most production friendly idea, parents can CHOOSE a guardian and designate that person themselves, with parents rotating responsibilities for the kids. Then, the other parents can watch on a monitor or live streaming if they choose to do so. This person should NOT be on payroll, and should be in addition to the wrangler, whose job is NOT child safety--it is to make production run smoothly and make sure the kids make their cues.

You must require parents to be responsible for their children at all times. You must give them the ability to do so, with sight and sound access. If the parent CHOOSES to sign over guardianship to another parent, it is their decision.

And again, Group Certificates present the biggest danger of all. In this setting you would be allowing a group of 20 children, with no education or experience in the workplace, to be supervised by one unrelated person. It is not out of the realm of reality to think that a pedophile (even someone convicted of a sex crime) could put together a group of children, entice them with "work in the movies", and supervise them on set with no repercussions.

In the case of Group Certificates, there are no permits (which means you have no idea if the child is even physically capable to work, because they had no physical), and no requirement for the employer to have contact information for the children. You are putting the most vulnerable workers in a place you clearly consider dangerous (because you are creating these Rules). You are putting them there with no safety net. Again, the Group Certificate must be deleted from the Rules. It is dangerous.

--**186.5.1 (b) Education -- Following Your Own Calendar** New York really needs to consider if you intend to honor the educational statutes of other states. It may be an easy route for the DOL, but it appears to be in violation of currently existing Education Code. There are two functions to consider: issuing permits to out of state kids, and actually schooling out of state kids on set.

Allowing children to follow the Rules of their home state might work for short term employment. But it does give a hiring advantage to non-state residents, since several of the states around New York have very lax homeschool policies. A sweeping "follow your home state" rule allows children in neighboring states to legally declare vacation whenever they are working. Since producers will gain many hours of work time, they will hire the out of state kids. Is this what New York wants? Shouldn't asking for a work permit in New York also mean having to follow educational laws in New York?

New York has a compulsory attendance law. New York also do not recognize homeschooling unless it is done thought their school district. If there is no grace period for compulsory attendance, perhaps one could be instituted for child performers. In other words," in the case of a valid Child Performer or Model Permit, the child may follow their home state curriculum and calendar for two months. After that point, they would need to transition to legally schooling according to the laws of the State of New York".

California will issue a permit to an out of state child, based on their home states' educational law. For instance, if they are legally homeschooling in Texas, the parent would have to provide that documentation to the Department of Labor in California to get a permit. This allows them to seek work. Still, it is a hiring advantage to those out of state. California is considering a change because it conflicts with the compulsory attendance law.

There are many facets to the educational component – and many challenges for families of child performers. Please work closely with the Department of Education to ensure their requirements are being met.

--**186-5.1 (d) Equivalent Education** We realize that this phrasing was a function of the original law, designed to be inclusive. However, it is wishy-washy, and encourages parents to say their kid is "fine". This can all be simplified: The child must be legally attending school somewhere (according to the laws of New York or according to the laws of their home state--whichever is decided). ALL children will be schooled on set starting on the 3rd day of employment. The parent is responsible to bring 3 hours of schoolwork from that legal school...no matter what it is. The teacher then sequesters the children to work on that work for 3 hours.

--**186-5.1 (d)(3) Teacher Child Ratios** The ratios appear to us to be fine and consistent with union contracts, and better than ratios for public schools. It should not be expected that these children are actually getting an education on set or in the theatre. That simply doesn't happen. It should be expected that they are getting a 'substitute", a bridge, to their regular education. Employers are responsible to provide a "bridge" but parents are responsible for the whole of the child's education.

--**186-5.1 (d)(5) School room Space / No One Else in the Classroom** This needs to be deleted:

-- It does not allow for sight and sound access by the parent or child wrangler (assuming you continue with that policy for theatre).

--It does not allow homeschooling parents to give continuity to their child's regular education

--Nowhere else in school situations does a clause like this exist. Parents are legally allowed, and encouraged to volunteer in their child's public school, why would we ban them from a school on set?

--This is a safety issue since it forces parents to leave their child alone with a stranger...one who has no background check. In some cases, it forces us to leave our child one on one with a stranger, in a locked room. Remember, these teachers are not beholden to a principal or public process. We are giving them free reign and total access and that is unacceptable.

This language is taken directly from the SAG contract. We know this, because it is the only place it exists, and it has been discussed at SAG as a possible deletion from their contract since the original intent was to keep lighting and dangerous equipment from being stored in the schoolroom as was the common practice in the 1970s.

Even though it was never intended to be used to restrict access to parents, it is urban legend and teacher organizations use it to create job security for themselves. In this case, we believe teacher groups are using it to combat the possible unionization of wranglers and create a law that says only a TEACHER can be in the schoolroom. This cannot be tolerated.

Related Issue: Homeschoolers Homeschooling is very common in the Entertainment Industry. In California, we estimate that almost half of the working children are homeschooled in some fashion. Nationwide, homeschoolers out perform their peers on standardized test, and generally succeed academically above both public and private schools. So homeschooling, if done properly and legally, should be considered a valuable option within the Rules.

In California, homeschooled children are required to do their 3 hours of work on set with a teacher, regardless of their homeschooled status. This function eliminates a hiring advantage for homeschoolers, although it does annoy the parent-teacher, who must hand over the reins of their child's education for 3 hours a day.

BizParentz believes that the right of parents to homeschool their children is crucial in the entertainment industry and is an absolute necessity for some children in order to receive a quality education. Parents must retain the right to educate their children in the way that works best for that child. However, we do not believe that parents who choose public school or private day school should be discriminated against or that homeschooling should create a hiring advantage for homeschooled children. We recognize that there have been abuses of homeschooling within the entertainment industry, but still feel that it is the right and responsibility of the parent to determine what is best for their child...and that most parents handle it well.

This topic has many facets and since New York is one of the most restrictive states for homeschooling in the nation, it is crucial that the Department of Education and homeschooling parents be included in any discussions of education. The DOL needs to realize that there is an inherent philosophical conflict between the tutors and the homeschooling parents. Being banned from your child's education, when you ARE the child's regular teacher is not acceptable. Meanwhile, the tutors, because they must be credentialed (credentialing, while a valuable measure, is only a public school function) are generally public school teachers in mindset at least. The background and educational philosophy of a credentialed teacher is generally considered to be deficient to a homeschooler. The subject of homeschooling must be addressed in the Rules, but it takes far more study.

--**186.5.1 (d)(6) Teacher Determination of Instructional Hours** It should absolutely NOT be left to the teacher to decide how many hours of instruction should happen. The teacher is employed by he producer who will quickly confer with an eager parent and decide that no instruction needs to happen that day. This clause gives the power of education to a substitute teacher not the regular teacher, and not the parent, which is unacceptable. It is inconvenient for producers as well, since they need to plan the work day and include instruction time. Just require 3 hours, every day, no exceptions.

--**186.5.1 (d)(7) Educational Hours** There is no need for a limit on the hours education can take place. The hours should be included within the 9 hour workday (or whatever it is by age) and THOSE hours should be restricted (see later comments about work hours). That is enough.

--**186.5.1 (d)(10) Excused absences**, to a limit are a good idea. This section was copied from California law. However, this clause is currently not working, and has no teeth. If the Education Department is not involved and if this does not become part of their excused absence policy, it will not be enforced. And it isn't. No Child Left Behind and the Regent's requirements mean a child needs to be physically present for the school to receive funding. Conferring with public school officials is crucial (this only applies to public school, by the way, since private schools can make whatever absence policies they want). Perhaps a policy could be developed to put working children on a special independent study program so that the schools get their funding (which is really the main function of "excused" versus not excused).

--**186-6.2 (a) Work Hours restrictions** As I'm sure the DOL has discovered by now, a 10:00PM "curfew" for child work is not acceptable for anyone. It needs to be extended to Midnight. If you do this, it will solve a host of problems, including the obvious Broadway curtain call issue.

--**186-6.2 (c) The Twelve hour Turnaround** This is crucial for child health and should be maintained. In relation to school though, it should be noted that Broadway kids are routinely working until 11:00PM and then attending regular day school at 8:00AM the next morning, effectively giving those children a 13 hour workday (school, then reporting to the theatre at 5 or 6pm) , with rehearsals adding on top of that!

California and the SAG contract have clauses that would prevent this: if a child attends their regular school for any portion of time, it counts as 6 hours of their work day. In other words, if the child's age dictates they can be on set for 9 hours, and they go to regular school before reporting to work, they can only work for 3 hours, since school is considered to be part of the paid work day. This makes the producers responsible for their part in education...they want to control it, so they don't' generally allow kids to go to regular school on work days. Please remember and factor in that for most children, attending school is their “job”. Children employed in the entertainment industry in effect have 2 “jobs”. While this may be a non-issue for a short term job, this is a schedule which could become ineffective long term.

In New York we would suggest that the standard be 3 hours. If the child attends their regular school at all, it counts as 3 hours of their work day. That means on Broadway, the child could not report for work until about 6PM

--**186-6.2 (d) Work Hours By Age** We can see that these are taken directly from California law and from the SAG contract. That's fine, and they work well in television and film. In our opinion, they work for theatre too...with a few minor adjustments, such as an extension for all children to Midnight, and a school provision that works as part of the work day. Yes, older kids will be able to work a Broadway show in the entirety (5 hours of work is a 3 hr show, plus makeup time). Kids under 9 will likely have to do school during the show, or skip the curtain call.

--**186-6.4 (d) Cribs/food/diapers** in the workplace. This is in the SAG contract, but is not necessary and is a burden on employers, not to mention a liability risk for employers (imagine they provide a baby food that the child is allergic to). Space is necessary. Food and diapers should be the parents' responsibility.

END COMMENTS

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How to Build a Law

How to Build a Child Performer Law

Bizparentz is called upon occasionally to assist legislators in developing new laws regarding young performers. In doing so, we realized that many other entities might benefit from a greater understanding of why child performer laws are important, and how they are structured. Film makers need to understand why the requirements might vary from state to state. Media outlets may wish to use this info to apply to current events. So here it is…a primer of sorts for child performer legislation.

Background

In 1938, child performers were officially exempted from Federal Labor law.

The Fair Labor Standards Act of that year included what is sometimes referred to as the "Newsie" exemption since paper carriers were also exempted. The paperboys represented an enormous slice of the child labor pool in that era; crucial to the delivery of the newspapers that provided the foundation for empire builders like Hearst and the Chandler Family. Child performers of the day included stars like Shirley Temple and Jackie Coogan (who were paid far more than child actors today), but many child performers were doing vaudeville/circus type acts, traveling with their parents. Thanks to that exemption child actors do not have a federal standard for minimum wage or the number of hours they might work.

That leaves any legislative efforts to each state's labor department. For many years, California was really the only state that actively enforced child entertainment labor laws. That state continues to have the most extensive matrix of laws in the nation, with laws being scattered through the Family Code, Probate Code, Labor Code and Education Code.

In recent years, the growth of "runaway production" (the idea that film making will travel to areas outside Hollywood including Canada, as well as other states) has caused states to compete with each other for the business of Hollywood. States outside California have created film offices, tax incentives and other perks that entice film makers to film in their area. Sadly, one the enticements have often been a LACK of child labor laws.

Wise states have realized the potential exploitation. Luring production in, and then having no legal infrastructure to support it is NOT a good idea. Some states have passed new legislation in the last few years: New York (2004), Louisiana (2005), and New Mexico (2007) for example. Several more are entertaining bills as we speak.

We are pleased at the efforts of states to protect children; however, it is creating a confusing web of laws that are becoming difficult to follow.

The Structure

Child performer legislation typically consists of 6 components. All 6 aspects must mesh for the legislation to work effectively.

1. Safety (Also see our Child Safety page)
2. Work permits, a system to track employers and children and allow for education of both of them. (Also see our CA Work Permit page)

3. Work hours (Read Work Hours (Word))
4. Trust accounts (these can be blocked or unblocked UTMA accounts, but both are commonly referred to as "Coogan laws"). (Also see our CA Coogan Law page)
5. Education (on set, and concerning the child's education back home) (Also see our Schooling page)
6. Penalties

Safety

A person must be designated to be responsible for the minor's safety on set. Language should be something like California's law which states, "A parent or guardian of a minor under 16 years of age must be present with and accompany such minor on the set or location and must be within sight or sound of the minor at all times." The age designation should match whatever age regular labor law in the state allows teens to work alone at the work site (at fast food establishments for example). We believe that parents should ALWAYS be this designee.

Perhaps it seems obvious that parents would accompany their child to work and be responsible for them. Apparently not, considering the 2007 events with CBS's reality show Kid Nation. But it is not uncommon for independent film makers and photographers to request that parents leave their children alone on set. One can imagine the danger there...sexual advances, dangerous stunts, etc. Someone must be responsible for the child's safety, and it cannot be the film maker, who has an obvious conflict of interest. The buck stops at the parents...but legislators must give them the right and responsibility to be present at the job site.

An additional thought regarding safety, in light of North Carolina's recent problems with the movie Hounddog, which they reportedly funded with their incentive program: Legislators might want to consider including a section about child pornography in this legislation as a safety measure. Something like "no child may be depicted in any media, as appearing to participate in a sex act." If you are unfamiliar with this issue, please call Bizparentz for clarification. No state should be the go-to location for questionable filming.

Work Permits

This is also the section of a law where the definition of a child performer is stated.

Some states, like California, recognize that the payment of wages is not the sole definition of a professional performer. The laws must extend to those children performing in any media…print modeling, circus, film, television, theatre, musicians and professional athletes. States may also expand it a bit to include "any form of electronic media (internet, podcasts, or any other media or advertising mechanism to be designed in the future)".

We strongly suggest that states create a different ENTERTAINMENT WORK PERMIT for young performers in addition to the regular work permits that teens normally get. This permit allows the state to track young performers and it provides the function of the child's school back home to know what they are doing when they are absent. It supports the education component.

In California we have dual work permits for children, one for kids working at McDonalds and such ("work permit" issued by their high school for ages 14-18), and another for kids in the entertainment industry (ages birth to 18). The later is issued by the Labor Department, but is signed by the child's school back home to insure that this child is progressing satisfactorily in school—so the absence from school to film won't hurt the child's education. When a parent receives an entertainment work permit, they also receive a copy of the labor law related to the entertainment industry. States who do not plan to have welfare workers on the set (in California we do) it is particularly crucial that parents are introduced to the requirements of the new laws, and become aware of their rights and responsibilities.

California also has a permit for employers in the film industry ("Permit to Employ Minors in the Entertainment Industry"). This permit is signed by the film maker (and can be revoked as a penalty) and allows the labor

department to distribute copies of the labor law to the film maker.

It is very important that states provide some mechanism for education of the film makers and the parents of actors. Permits allow a function for this. Hand them a copy of the new law, and have them sign that they understand it. That is supportive for the penalties states may also impose.

Work Hours

Allowable work hours are crucial to any child performer law. Without them, producers can and will work children many hours a day, into the night, and then offer to provide education at 2:00AM. An example of reasonable work hours is found in the Screen Actors Guild contract, and most states use this as a guideline. A child-performer's working hours, including school time, are limited as follows:

- A child under the age of six shall not be employed or permitted to labor for more than six hours in one day.
- A child over the age of six and under the age of nine shall not be employed or permitted to labor for more than eight hours in one day;
- A child over the age of nine and under the age of sixteen shall not be employed or permitted to labor for more than nine hours in one day; and
- A child over the age of sixteen and under the age of eighteen shall not be employed or permitted to labor for more than ten hours in one day.

Both California law and the SAG contract require that school hours (specifically 3 hours per day on set) are part of the child's work day. This is really crucial to any education component! The law must specify both the time required for education (recommend 3 hours) and that it must occur WITHIN the child's work day. New York made this mistake, when they recently passed an education component to their entertainment law, but failed to specify work hours. This essentially made the legislation worthless.

We also recommend language here in regard to using premature infants. Years ago, it became common for productions to use premature babies and preemie twins and triplets for shots involving infants, since they were smaller. The safety issues for such infants are extreme and states may want to protect them by banning the use of preemies.

Alternatively, states may want to follow the lead of California by requiring a doctor's physical for infants under the age of 6 months within the Entertainment Work Permit process (yet another use for that permit).

Trust Accounts

Trust accounts allow for employers to automatically deposit a portion of the child's earnings into a trust account, much as adults might get a deposit into their social security account. Usually the amount is 15%.

Some states require ALL performers to abide by this law (California being one) while others (New Mexico, Louisiana and Canadian British Columbia for example) establish an earning limit before the Coogan law goes into effect. That way, low earners like background performers won't be subject to the law.

Outside the industy, it is common to hear outrage at this amount—"only" 15%. To those familiar with a child actor's pay check, this amount is not paltry. Keep in mind that child performers must pay taxes (at a higher rate that adults usually—around 30%), union dues (2%), agent (10%) and manager (15%) commissions, and pay for business expenses such as photos, classes, and transportation. A 15% Coogan account is a reasonable percentage considering that most of the child's paycheck is gone before they see it.

Please note that legislators need to be very clear about WHY they want the Coogan component. All Coogan laws are inherently anti-family. They are designed to protect children from their own parents, who will, presumably steal their children's money. Philosophically, there are problems with this concept. Also, is there any other industry where a worker is told how to spend their money, or to have a mandatory savings? Is that a

violation of the child's rights?

Ownership of the earnings Note that only in California does the entire amount of money belong to the child (not just the 15%). This was legislated in our Coogan law, but was not duplicated in New York, New Jersey, or Louisiana. In those states, the money continues to belong to the head of household.

There are two kinds of trust accounts. Blocked and regular trust accounts which are NOT blocked. There are pros and cons to each. For states considering a blocked account:

Pros:

- It truly protects the child's money from their parents if you believe in that.
- It truly preserves that 15% until the child is 18.

Cons:

- Banks WILL pay the lowest possible interest on these accounts, so they are not generally good investments.
- Penalizes the child in the realm of college financial aid. Because it is blocked, the money will be in the child's name and 100% counted against them in the Federal FAFSA form but they cannot access the money until after most have started college.
- Many of the banks in California who initially offered this vehicle no longer offer it, so they are tough accounts to find.

Non-blocked trust accounts are limited to use for the benefit of the minor, and have their own set of pros and cons. The primary issue is that if you aren't going to block the account, the money isn't really protected...so the law is toothless.

Lastly, states considering Coogan legislation should recognize that California's Coogan system is extremely flawed. For instance, reportedly over $2 million dollars of children's earnings were not deposited into trust accounts, due to a breakdown in the system. That's a pretty dramatic statement of how crippled the system is. It required an entire fix-it bill just to figure out what to do with the funds those employers had kept instead of paying to the children.

The state attempted multiple remedies to this problem, such as attaching Coogan trustee statements to the work permit in order to make them valid, requiring production to give the parent a receipt so that they won't "lose" the paperwork, requiring employers to pay the Coogan concurrently with the rest of the child' paycheck instead of holding the funds and collecting the interest, etc. None really work completely. Even after California implemented these increased protections, approximately 25% of the children are not paid correctly. So did the Coogan law really protect the kids' earnings?

Education

Newer entertainment labor laws include a provision for the education of performers while they are working. This usually requires a "studio teacher". This is consistent with the SAG contract, New York law, and Louisiana law. In California law, however, it should be noted that our studio teachers are more than "just" teachers. They are dual credentialed (meaning they can teach both high school and elementary school) AND they have been certified by the state as a child welfare worker, with special training in set safety. So in California, "teachers" are present on set 24/7 and are charged with the safety of the minor as well as their education.

It needs to be clear that actual instruction time would be required, and how long that instruction time would be. As mentioned in the work hour's section above, we strongly suggest that you include 3 hours of on-set education on school days, included within the work hours listed for each age group.

Compulsory Attendance and Excused Absences. Education for the young performer must link to their regular education when they are not working. If it isn't, child performers may be schooled on set, but still be punished for the absence when they return to their regular school after the job is over.

Establishing a separate Entertainment Work Permit, helps address the issue and close the loophole. The child's school back home must sign off on their work permit, so the child must have been doing OK in school before filming, and the school is aware that the child is a professional actor.

It is also suggested that states add an additional line that provides for "EXCUSED ABSENCES when a child is working under the guidelines of the Child Labor Act". Meaning, they have a credentialed teacher on set, so they should get an excused absence from their regular school. Legislators may want to check with their Education Department to see if their ADA is affected by the absences, if a line in this bill (of Labor Law) will fix it, or if they need a separate Education bill.

In California, this quickly became a nightmare and had to be fixed with separate legislation. In New York it is a nightmare right now. Kids work and get education on the set, but their school at home declares them truant.

If done correctly, when the child attends school on the set, under a certified teacher, they would get an excused absence from their regular school and would return to their school without a break in their education.

Penalties

Typically, child performer legislation includes penalties (fines, jail or both) for violating the law. These are imposed on the production company, the parent, and possibly the studio teacher if you have one.

Again, permits are crucial. Film companies are itinerant by nature...they create a company for the purpose of one film or commercial. They can breeze into town, violate your laws, and then close their business before you even realize there was a complaint. If states have a permit system, it creates some advance notice of filming locations, whether there are children involved, and an identity attached to these companies and individuals.

In Summary

Parents welcome the support of child performer legislation. It makes our jobs MUCH easier. But it is important that the laws make sense and can be realistically supported by the entertainment industries existing infrastructure. Otherwise, the laws become a confusing web of unenforceable ideas, a web in which parents and kids are become caught. If we want to protect kids, we need to devote the time to really understanding how the industry works, and not get caught up in the drama and theatrics of child stars gone bad and productions gone wild.

END article http://www.bizparentz.org/entertainmentlaws/howtobuildalaw.html
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