

**Testimony of J. Scott Robinette
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**Before the Pennsylvania House Labor & Industry Committee
regarding House Bill 927: Child Labor Law**

**Harrisburg, Pennsylvania
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Introduction

Good afternoon Chairman Miller, Chairman Keller and members of the House Labor & Industry Committee.

I am Scott Robinette, Deputy Secretary for Safety & Labor-Management Relations for the Department of Labor & Industry. Accompanying me is James Holzman, Deputy Chief Council with the Department's Labor Law Compliance Division. On behalf of Secretary Julia Hearshway, thank you for the opportunity to present the Department's comments on HB 927.

Need for Reform

Pennsylvania's Child Labor Law was first enacted in 1915. Over the last 96 years, the way people live their lives has drastically changed. We went from the horse and buggy to horse powered engines; from black and white television to high definition; from compasses to GPS; from phonographs to digital downloads; from Vaudeville to the Internet.

Likewise, the workplace has changed. Businesses have become safer, diverse, innovative and high-tech. As new generations enter the workforce, they carry with them different expectations. But despite the changing landscape, there is one constant: the need to protect children. Ironically, the Child Labor Law has been amended only a handful of times since 1915, most recently in 1999 – before the explosion of reality television and social media.

Legislative Proposals

Over the years, the General Assembly has considered a number of legislative proposals to bring the Child Labor Law into the 21st Century. Most recently, the House unanimously passed Representative Murt's bill, HB 1548, which amends the current law to address entertainment, particularly

documentaries and reality television. In addition, it allows minors under 7 years old to engage in other performances. We appreciate Representative Murt's efforts on HB 1548 and agree that addressing the entertainment industry must be part of the dialogue.

Today's hearing regards Representative Delozier's bill, HB 927, which would repeal Pennsylvania's Child Labor Law and replace it with a new Child Labor Act. It would govern the employment of minors, their hours, work permit requirements, participation in entertainment, provides for administrative and criminal prosecutions, specifies prohibited employment and addresses participation of minors in emergency services.

Department Views

The Secretary fully understands the need to reform the Child Labor Law and has made it a top priority for the Department. As such, an internal work group was formed to explore the issue and review the legislative proposals on the table. We also recognize that the issue impacts many different entities and we want them to be included in the discussion. Our plan is to meet with key stakeholders in the coming weeks to further discuss the issue and hear their viewpoints. It is our expectation that we will be ready to comment in more detail on HB 927 along with our specific recommendations during the fall session. We will be sure to keep you abreast of our progress.

The Department believes HB 927 represents an encouraging starting point and framework for further dialogue. While the Department does not have an official position on the bill at this time, broadly speaking, there are a number of goals we support. We would welcome the opportunity to help you further develop these goals as the bill moves through the legislative process:

- The Department supports the goal of crafting a modernized, well-written, clear and easy to understand law. Our reasoning is quite simple. The current law is outdated and confusing, which impedes the Department's ability to ensure compliance. Modernizing the law will be good for business, ensure compliance, and strengthen enforcement.
- The Department supports the goal to align state and federal standards. Currently, the state law is inconsistent with the Federal Fair Labor Standards Act, creating confusion for employers and workers. Situations arise where an employer is in compliance with federal law but not state law, and vice versa.
- The Department supports the goal to address minors engaged in motion picture and television production. Currently, the standards for these two industries are ambiguous and cause confusion for production companies and enforcers.
- The Department supports the goal to grant investigative subpoena power and review certain records. This authority will provide staff with the tools to investigate claims more efficiently.
- The Department supports the goal to hold administrative hearings and impose administrative monetary penalties for each intentional violation. Currently, the Department does not have the explicit power to issue corrective orders and the law only allows summary criminal prosecutions. The Department expends extensive resources in prosecuting cases throughout

Conduct of a hearing was insufficient in light of this section when the referee failed to advise an uncounseled claimant of rights, gave claimant no meaningful opportunity to challenge hearsay documents upon which the employer's case was based or to cross-examine declarants, made no effort to solicit the claimant's views in an orderly manner designed to test the credibility of the employer's evidence, attempted to dismiss the claimant after the conclusion of the employer's submissions without questions or further proceedings, responded to the claimant's requests to speak in a manner designed to abbreviate the claimant's reply, and made no effort to clarify the claimant's challenge to the employer's evidence, but rather cross-examined claimant apparently for purposes of reinforcing the employer's case. *Unemployment Compensation Board of Review v. Ceja*, 427 A.2d 631 (Pa. 1981).

the state to obtain light penalties for a first offense. Under HB 927, the Department may not impose administrative penalties if the person has been sentenced under the criminal penalty provisions of the bill for the same conduct. Additionally, the Department may not take criminal or administrative action against a person who has already been successfully prosecuted under the Federal Fair Labor Standards Act for the same conduct.

Summary

The Administration clearly recognizes the need for reform and we look forward to working with the Committee and all stakeholders in finding common sense solutions. There are many new faces both in the Department and in the General Assembly – I am one of them. I can assure you, the leadership within the Department wants to build our relationship and create a strong partnership so we can address these and other issues.

As the process moves forward, I look forward to working with the Committee and staff towards our commitment of modernizing the Child Labor Law and protecting children.

Thank you again for the opportunity to present the Department's views. I would be happy to answer any questions the Committee may have.

Evidence that the referee assisted an uncounseled claimant as required under this section is sufficient to prove that claimant's right to present evidence and cross-examine adverse witnesses was in no way compromised. *Reed v. Unemployment Compensation Board of Review*, 522 A.2d 121 (Pa. Cmwlth. 1987).

To comply with subsection (a), an Unemployment Compensation Board of Review referee must advise an uncounseled claimant of the claimant's due process rights to be represented by counsel, to cross examine adverse witnesses, and to offer witnesses in the claimant's own behalf. The referee must render every assistance compatible with impartial discharge of the referee's duties; however, the referee is not required to become, and should not assume, the role of claimant's advocate. *Brennan v. Unemployment Compensation Board of Review*, 487 A.2d 73 (Pa. Cmwlth. 1985).

Where the referee failed to advise a pro se claimant of rights and to ask important questions concerning the reasons for claimant's termination of employment, the referee violated subsection (a) (responsibilities of the tribunal to a pro se party) and the case was remanded. *Tate v. Unemployment Compensation Board of Review*, 477 A.2d 54 (Pa. Cmwlth. 1984).

A claimant who elects to proceed without legal representation, and who receives all the assistance from the tribunal due under subsection (a), cannot be heard to complain on appeal that case might have been presented more effectively or with greater credibility with the assistance of counsel. *Rodgers v. Unemployment Compensation Board of Review*, 476 A.2d 1014 (Pa. Cmwlth. 1984).

Where, in violation of subsection (a), a referee has failed to advise an uncounseled claimant of the right to present and subpoena witnesses, the court will order a remand unless it can be shown that the referee's omissions were not prejudicial to the claimant or did not materially affect claimant's rights. *Finley v. Unemployment Compensation Board of Review*, 474 A.2d 431 (Pa. Cmwlth. 1984).

While a claimant appearing at the referee's hearing without counsel is entitled under subsection (a) to assistance from the referee in the development of a case and advise as to claimant's basic rights, claimant need not be shown any greater deference than would be afforded a claimant with an attorney. *Groch v. Unemployment Compensation Board of Review*, 472 A.2d 286 (Pa. Cmwlth. 1984).

Where a referee asked an unrepresented claimant if claimant wished to ask questions of the employer at the conclusion of employer's testimony and also explained claimant's right to subpoena the testimony of the writers of certain letters which had been excluded as hearsay, the referee had complied with subsection (a). *Ellis v. Unemployment Compensation Board of Review*, 471 A.2d 1281 (Pa. Cmwlth. 1984).

No remand was granted for an alleged violation of subsection (a) where the record indicated that the referee advised the claimant of the right to have an attorney represent claimant at the hearing, to present witnesses in his behalf and to cross-examine those witnesses presented against claimant. The referee was, also, not remiss in taking a more active role in the development of the claimant's case. *Barksdale v. Unemployment Compensation Board of Review*, 469 A.2d 716 (Pa. Cmwlth. 1984).

A referee discharged the obligations under subsection (a) by informing the claimant of the right to counsel, the right to offer witnesses and to cross-examine adverse witnesses. The referee does not fail in the discharge of those obligations because of a failure to ask if claimant understands these rights. *Oliver v. Unemployment Compensation Board of Review*, 450 A.2d 287 (Pa. Cmwlth. 1982).

The referee did not fail to perform the duties under subsection (a) merely because the referee neglected to define "able and available" and "work" prior to asking claimant whether she was able and available to accept work. *Ellison v. Unemployment Compensation Board of Review*, 431 A.2d 1094 (Pa. Cmwlth. 1981).

Fairness and the provisions of subsection (a) require an Unemployment Compensation Appeals Board referee to advise an uncounseled claimant of the right to be represented by counsel, offer witnesses and cross examine adverse witnesses in an unemployment compensation evidentiary hearing. *Katz v. Unemployment Compensation Board of Review*, 430 A.2d 354 (Pa. Cmwlth. 1981).