



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

March 2, 2010

Larry C. Drapkin, Esquire  
MITCHELL SILBERBERG & KNUPP, LLP

**Re: Pennsylvania's Child Labor Law/Jon & Kate Plus 8**

Dear Mr. Drapkin:

The Bureau of Labor Law Compliance (Bureau) investigated the television show, "Jon & Kate Plus 8" under the Pennsylvania Child Labor Law (CLL). 71 P.S. § 563; 43 P.S. § 66. The Bureau reviewed whether performance permits were required for the minors appearing on this show and whether the minors were being accorded the treatment required by the CLL and its regulations. 43 P.S. § 48.1; 34 Pa. Code §§ 11.1 through 11.7. The Learning Channel (TLC) and Discovery Talent Services, LLC., Figure 8 Films and the Gosselins provided information to the Bureau over the course of its investigation.

Through this investigation, the Bureau has not obtained evidence that there were transgressions of the requirements for treatment of child-performers. However, the Bureau concludes that permits were required for this show under the CLL. The Bureau, however, will resolve this matter without legal action if the following resolution is acknowledged and accepted.

*Background*

This show was broadcasted weekly for five seasons on TLC. It was described as a reality/documentary-type show featuring Jon and Kate Gosselin and their eight minor children: the twins being 9 years old and the sextuplets being 5 years old during the fifth season. The Gosselins received payments for each 30-minute episode and 1-hour special during the show's run. The parents were responsible for allocating the fees among the family.

OFFICE OF CHIEF COUNSEL | DEPARTMENT OF LABOR & INDUSTRY  
LABOR LAW COMPLIANCE DIVISION



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Figure 8 Films, the production company for this show, ceased filming this show on October 1, 2009. The last episode produced was aired on November 23, 2009.

According to the information provided by TLC, filming usually occurred 2-3 days per week for an average of 4-6 hours per day. Filming usually occurred from 9:00 a.m. until 6:00 p.m. Filming stopped at 7:00 p.m. on an evening before school. Filming usually occurred at home with the exception of family vacations in other locations. Numerous episodes were scheduled for season 5.

The activity being filmed was spontaneous. However, children introduced episodes of the television show and transitions. DVDs and other merchandise were sold involving the children's appearance. Lighting was placed in the home for the show and there was product placement in some episodes. According to the TLC description of this show which appeared on its website:

With sextuplets and a pair of twins, the Gosselins are hardly your typical American family. Jon and Kate are the ambitious parents of this adorable bunch and they are battling all odds to make sure their brood has a normal, happy childhood. We follow them as they tackle seemingly ordinary life events like pumpkin picking and birthday parties that become extraordinary when you have two sets of energetic multiples.

<http://tlc.discovery.com/tv/jon-and-kate/episode-guide.html>.

#### *Pennsylvania's Child Labor Law*

The CLL is highly remedial and protects children in their healthful development to adult age from exploitation from business and industry, including minors who are unpaid performers. The CLL generally prohibits employment of minor under 16 years old:

No minor under sixteen years of age shall be employed<sup>1</sup> or permitted to work in, about, or in connection with, any

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<sup>1</sup> The regulations define *Employer* and *Employee* as follows:

*Employer*—Any person who for his own account or benefit or that of his patrons, directly or indirectly, or through an employe, agent,

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establishment<sup>2</sup> or in any occupation except that a minor between the ages of twelve and fourteen years may be employed as a caddy subject to the limitation that he or she carry not more than one golf bag at a time and for not more than eighteen holes of golf in any one day and except that a minor between the ages of fourteen and sixteen years may be employed as hereinafter provided in such work as will not interfere with school attendance: Provided, however, That nothing contained in this section shall be construed as superseding or modifying any provisions contained in section seven of the act to which this is an amendment.

43 P.S. § 42. A minor is engaged in CLL-governed employment if the child's activities are supplemental or aiding in the work of others. Activities that are purely for amusement, play or self-development are not considered employment or work. *Grenell v. State Civil Service Commission*, 923 A.2d 533, 542-543 (Pa. Cmwlth. 2007); *Commonwealth v. McKaig*, 29 D.&C. 629, 632-634 (C.P. Philadelphia 1937); Pa. Atty. Gen., Op. 78-22, 8 D.&C.3d 160, 166-167 (August 31, 1978).

However, minors under 16 may participate in television performances if a special permit is issued by the Bureau. The Bureau may impose restrictions to permits that it issues. 43 P.S. § 48.1(a.1); 34 Pa. Code §§ 11.3-11.7; *Grenell*, 923 A.2d at 543. Violations of the CLL constitute grounds for criminal penalties. 43 P.S. §§ 65, 66. Labor & Industry may also take other legal action to assure CLL compliance.

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independent contractor, or any other person employs or permits any minor to work in theatrical productions, musical recitals or concerts, entertainment acts, modeling, radio, television, motion picture making, or in other similar forms or media of entertainment.

*Employment*—A minor engaged in a performance shall be deemed employed, if any person, including the performer, his parent or teacher, receives remuneration from the performance or if any performer in the production is paid for performing.

34 Pa. Code § 11.1 (definition of *Employer* and *Employment*).

<sup>2</sup>The CLL defines the word *establishment* as, "any place within this Commonwealth where work is done for compensation of any kind, to whomever payable..." 43 P.S § 41.



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Therefore, the participation of the Gosselin children in this show is *employment* under the Child Labor Law because of the CLL's highly remedial nature, the minors' continuing participation in this series, the direction that the children sometimes received, and because the Gosselins and others received remuneration. 43 P.S. §§ 41 (definition of *establishment*); 42, 48.1; 34 Pa. Code §§ 11.1 (definition of *Employer* and *Employment*), 11.3. *Grenell*, 923 A.2d at 542-543; *McKaig*, 29 D.&C. at 632-634; Pa. Atty. Gen., Op. 78-22, 8 D.&C.3d at 166-167.

Figure 8 Films, TLC, Discovery Talent Services (the Discovery Entity that contracted with the Gosselin family ("DTS")), the Gosselins and all affiliated parties deny that any of them did not comply with the CLL or that permits were required, as the Bureau concluded.

#### *Resolution*

The Bureau will not initiate legal action for the filming or performances that *previously* occurred without permits if all of the following conditions are met:

1. Bureau permits are obtained if the minor Gosselin children ever appear in this show, similar TLC or Discovery Network shows, or similar type of programming performed or filmed in Pennsylvania in the future. Furthermore, the permit applications will contain accurate and complete information. Each minor under 18 must have a permit to appear on this show or type of show. Permits must be renewed every 6 months for any of the eight children appearing on this type of show. 43 P.S. § 48.1(a.1); 34 Pa. Code §§ 11.1-11.7.
  - a. Bureau forms shall be utilized for the permit applications but the applicant may provide additional information or explain answers. 43 P.S. § 48.1(a.1); 34 Pa. Code § 11.4.
  - b. Pennsylvania's Right-to-Know Law may govern the permits and applications. It allows an agency to withhold from public disclosure a "record identifying the name, home, address, or date of birth of a child 17 years of age or younger" and where disclosure, "would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual." 65 P.S. §§ 67.708 (b)(1)(ii), (b)(30). However, the Bureau has the burden of

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proving that records are exempt from disclosure and may have to ultimately comply with any disclosure orders that are issued. 65 P.S. §§ 67.708(a)(1), 67.1101, 67.1301. The Right-to-Know Law does not constitute a privilege in civil or criminal actions in Pennsylvania courts. *Ben v. Schwartz*, 556 Pa. 475, 729 A.2d 547 (1998).

2. Permit applications, if made, shall not be construed or considered as an admission of any wrongdoing. A permit application will not constitute an admission by Figure 8 Films, TLC, DTS, the producers, the Gosselins or any party associated with this show that permits were or will be required or that the minors were or will be *employed* under the CLL.
3. At least 15% of the gross proceeds of this show and future shows or performances, due to the children, remain or will be placed in the irrevocable trusts accounts for the minors registered on November 20, 2009 and formed under the trust agreements dated November 20, 2009 or similar trusts until the minors reach at least 18 years old unless the funds are distributed for the safety, welfare, education or health of the minor children according to the terms of the trusts and applicable state law. The Bureau shall be notified of any changes to the trust accounts and trust agreements.
4. The Bureau may reopen this matter and initiate legal action under the CLL if it receives other information that other violations occurred on this show or other performances, or if any information provided to it by Figure 8 Films, TLC, DTS, the producers, the Gosselins or any person acting on their behalf was inaccurate or untruthful.
5. The Bureau may reopen this matter and initiate legal prosecution under the CLL against any of the following who do not comply with this Resolution: Figure 8 Films, TLC, DTS, the Gosselins or any party associated with this show.
6. If this matter is reopened and/or there is legal prosecution under the CLL, Figure 8 films, TLC, DTS, the Gosselins or any party associated with this show may retain all of their legal defenses under the CLL, including but not limited to, their positions that the

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children were not employed, that permits were not required and that they fully complied with the CLL.

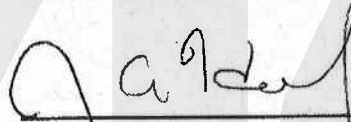
7. The Bureau may initiate action under the CLL for alleged violations that may occur in the future unrelated to "Jon & Kate Plus 8."

This resolution supersedes any previous discussions or proposals that may have been made. This letter and any opinions that it contains are not a binding norm or adjudication under 45 Pa.C.S. § 501, no hearing was held concerning issuance of this letter and no CLL charges were filed. Any alleged violation of the CLL must be adjudicated in a Pennsylvania court. 43 P.S. §§ 65, 66.

Upon execution of the acknowledgment of the Bureau's enumerated Resolution, the Bureau will close this matter in accordance with the terms contained in this letter. This matter will be advanced 20 days.

Please feel free to contact me if you have any further questions. Thank you for your cooperation.

FOR THE BUREAU OF LABOR LAW  
COMPLIANCE



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James A. Holzman  
Deputy Chief Counsel

/JAH

cc: Robert V. O'Brien, Executive Deputy Secretary  
A Robert Risaliti, Director, Bureau of Labor Law Compliance

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**ACKNOWLEDGMENT**

I verify that I have authority from Discovery Talent Services and Figure 8 Films to acknowledge and agree to the Resolution of this matter described in this letter. Discovery Talent Services and Figure 8 Films accept and acknowledge this Resolution. This acknowledgment is being executed in accordance with 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

CDStorer

For Discovery Talent Services

For Figure 8 Films

March 23, 2010

Date

Date