



## **NZ Equity Submission to the Department Of Labour**

### **Re: The Draft Approved Code Of Practice: Youth In The Entertainment Sector**

**June 2009**

#### **New Zealand Equity and the Media, Entertainment & Arts Alliance**

NZ Actors' Equity is an autonomous part of the Media, Entertainment & Arts Alliance and is the industrial and professional organisation representing performers who work in New Zealand's entertainment industries.

## **Introduction**

New Zealand Equity (NZ Equity) welcomes the opportunity to make comment in relation to the Department of Labour's Draft Approved Code of Practice for Youth in the Entertainment Sector (the Draft ACOP).

The need for children to have access to film, television and multimedia programs and live performances of work of relevance to their age and cultural reference points leads to a need for children to be employed at ages and in circumstances that would otherwise be considered inappropriate, indeed exploitative, by the community. The social good that accrues to children by enabling child performers to work in the entertainment industry must, however, be balanced so that work that results in a benefit for other children is also a benefit for the child performer. As performance is a creative endeavour, a child's engagement in performance work can be of particular benefit to the development of the child in question. However, participation in the entertainment industry workforce must only be allowed in a manner that does not lead to exploitation, exposure to inappropriate material or activities, or exposure to occupational health and safety risks.

## **The proposed ACOP – Youth in the Entertainment Sector**

NZ Equity believes that the Draft ACOP, which is based upon "the Pink Book," is inadequate and fails to offer basic protections to children.

NZ Equity argues that any ACOP based upon the Pink Book is unacceptable as it is no longer accepted within the industry and by NZ Equity as a legitimate code of practice. The former NZ Equity – which was a part of the NZ Distribution Union at the time – was a party to the Pink Book Code of Practice. However the NDU ceased to represent NZ performers. Despite having the same name the current NZ Equity is a wholly new and separate entity. NZ Equity is therefore not a party to this Code of Practice, has not signed off on it and consequently the Pink Book is no longer binding upon the industry and unenforceable.

In its stead NZ Equity put forward another draft code of practice as a more appropriate, thorough and comprehensive code of practice. This is at **Appendix A**.

NZ Equity requests that the Department of Labour move away from its position of finding the quickest, most expedient way to ensure compliance with the Health and Safety in Employment Regulations and to develop in consultation with the entertainment industry and all interested stakeholders an Approved Code of Practice that is unanimously supported.

With regards to the specific issues NZ Equity has with the current Draft ACOP, NZ Equity details these as follows:

### ***Scope***

The current Draft ACOP only refers to those engaging in screen based production work. NZ Equity represents performers working in the film and television industry, modelling, video and commercials industries and those working in live performance including in theatre. NZ Equity strongly argues that any ACOP supported by the NZ Government should cover those children who are employed across the entertainment industry including in live theatre.

### ***Hours of work***

More fundamentally though NZ Equity cannot support a code of practice that allows a child to work after 11pm. Clause 28 allows night shoots with no restriction on how late the shoot can go. This is unacceptable and counter to the interests of NZ child performers.

Furthermore the table under Clause 25.6 dealing with maximum hours is inadequate for the following reasons:

- it does not detail the hours during which the child may be employed eg 9 am to 6 pm;
- it allows work for children as young as 0 to 12 weeks to for example work 6 hours;
- it does not cater to the specific needs of babies and children in particularly vulnerable age brackets under 6 and 2, and
- despite clause 25.7, it does not provide limits on the days of consecutive employment specific to the needs to particularly vulnerable age categories.

### ***Rest breaks***

While there is a provision for shift breaks (cl. 25.8) and “age appropriate rest ...breaks” (cl. 25.11(f)) are referred to, there are no provisions for *compulsory* rest breaks. NZ Equity believes that an employer must ensure that each child be given a 10 minute rest break every hour and a one hour rest break every four – with these rest breaks included in the maximum employment hours per day: see [Appendix A](#)

### ***Travel provisions***

Clause 25.5’s reference to taking into account “the individual age and maturity of the child” is exceedingly vague and inadequate. NZ Equity believes the ACOP needs to include provisions that outline the specific responsibilities of the producer/employer with regards to travel to and from the workplace: see [Appendix A](#).

### ***Dressing Room and Toilet Facilities***

There are no provisions to ensure appropriate facilities to enable privacy for the child.

## NZ Equity Draft

### Juvenile Code of Practice

#### 1. General requirement to comply with Code of Practice

- (1) An employer must not at any time employ a child except in accordance with this Code of Practice, or in accordance with the laws in force in the jurisdiction in which the child is to be employed.
- (2) Where so required under legislation, an employer must obtain a permit before causing a child to be employed.

#### 2. Record of Employment and personal information

- (1) An employer must ensure that a record is kept for each child employed.
- (2) The record must include the following particulars:

##### *Personal information*

- a. the name, address and home telephone number of the child;
- b. the names, addresses and home, business and mobile telephone numbers (as applicable) of the child's parents or guardians;
- c. the name, address and telephone number of any person who has lawful authority to consent to the medical treatment of the child;
- d. an authority signed by a person who has lawful authority to consent to the medical treatment of the child consenting to the employer seeking, or where appropriate administering, such emergency medical treatment as is reasonably necessary;
- e. the name, address and telephone number of any person who is to be notified of any accident, injury, trauma or illness involving the child;
- f. details of allergies or other relevant medical conditions and needs of the child;
- g. details of any dietary restrictions of the child;
- h. names, addresses and telephone numbers of the persons who are authorised to collect the child from the employer;

##### *Employment and Education Information*

- i. the child's date of birth;
- j. the dates and times of each occasion on which the child is employed;
- k. the hours the child worked each day and each week;
- l. the date the child started and finished their period of employment;
- m. particulars of the place of work/location at which the child is employed on each occasion;

n. the name, address and both home and business telephone numbers (if any) of the child's supervisor on each such occasion.

- (3) The record must be kept available for inspection by the relevant government authority (where applicable) at the business premises of the employer.

### **3. Hours of Work**

- (1) An employer must not employ a child otherwise than in accordance with:
- (a) the times set out in Table A with respect to film and television, shopping centre performances, still photography and modelling or other exhibitions; and
  - (b) the times set out in Table B with respect to theatrical performances.
- (2) An employer must not require a child to work later than 9.00 pm on any day if the child has not been exempted from attending school in the morning on the following day.
- (3) An employer must not employ a child for more than four (4) hours on any day on which a child is required to attend school for at least three (3) hours.
- (4) The combined time required to fulfill educational requirements and employment in any seven (7) consecutive days, must not exceed 40 hours.

### **4. Shifts and Rest Breaks**

- (1) An employer must ensure that no child is required to start work less than twelve (12) hours after the child has previously finished work, whether for the same or for any other employer.
- (2) An employer must ensure that each child is given a 10 minute rest break every hour and a one (1) hour rest break every four (4) hours. The rest breaks are to be included in the maximum employment hours per day.
- (3) An employer must not employ a child for more than one shift on any one day.

### **5. Calculation of Time of Employment.**

- (1) A child's total period of employment during any period of 24 hours is to be calculated as if the following periods formed part of the time for which the child is employed:
- (a) any time in excess of 45 minutes spent by the child in travelling from home to the place of work;
  - (b) if the employer is responsible for bringing the child to work, any time between the child's arrival at the place of work and the child's actual commencement of work;

- (c) the whole of the time (including any rest breaks in work and any travelling time) that the child is required to be at work;
- (d) any time in excess of 45 minutes spent by the child in travelling home from the final place of work;
- (e) if the employer is responsible for taking the child home from work, any time between the child's finishing work and the start of the child's journey home from work.

## **6. Travel Home**

- (1) An employer must ensure that each child aged 12 years or under is collected or taken home after the child finishes work by a parent or guardian of the child, or a person authorised by the parent or guardian to collect or take home the child.
- (2) An employer must ensure that a child aged 13 years or older is collected or taken home after the child finishes work by a parent or guardian of the child, or a person authorised by the parent or guardian to collect or take home the child unless either of the following applies:
  - (a) the distance between work and home is less than 10 kilometres and travel home will be completed in the ordinary course within daylight hours or before 6pm, whichever is earlier; or
  - (b) the employer has been provided with written consent from the child's parent or guardian permitting the child to travel home alone, and travel home will be completed in the ordinary course before 8:30pm.

## **7. Food and Drink**

- (1) An employer must ensure that each child is provided with appropriate and sufficient nutritious food, having regard to the age, taste, culture and dietary restrictions of the child.
- (2) The food should be varied and should be served to children at reasonable hours.
- (3) An employer must ensure that water, fruit juice or other such drinks are readily available at all times to each child.

## **8. Protection from the Elements**

An employer must ensure that each child is adequately clothed and otherwise protected from extremes of climate.

## **9. Punishment Prohibited**

An employer must ensure that, while at work, no child is subjected to any form of corporal punishment, social isolation, immobilisation or any behaviour likely to humiliate or frighten the child.

**10. Notification of Accidents**

In the event of a child becoming ill or being injured, the child's employer must ensure that at least one of the child's parents or guardians is immediately notified of that fact.

**11. Parental Contact**

An employer must at all times ensure that each child is able to make contact with his or her parents or with some other person responsible for the child and must facilitate the making of any such contact whenever the child so requests or whenever it is otherwise appropriate to do so in the interests of the child.

**12. Recreation Facilities**

An employer must ensure that appropriate recreational materials and rest facilities are available for each child during breaks in work, having regard to the age and developmental needs of the child.

**13. Dressing Room and Toilet Facilities**

- (1) An employer must ensure that facilities exist so that any child is able to dress and undress in private.
- (2) An employer must ensure that clean and easily accessible toilet, hand washing and hand drying facilities are provided at each place of work.

**14. Inappropriate roles or situations.**

- (1) An employer must ensure that no child is cast in a role or situation that is inappropriate to the child, having regard to the child's age, maturity, emotional or psychological development and sensitivity.
- (2) An employer must not allow a child:
  - (a) to be exposed to scenes which are likely to cause distress to the child; or
  - (b) to become distressed in order to obtain a more realistic depiction of a particular emotion or reaction.

- (3) An employer must not employ a child in any situation in which the child is naked, and must ensure that the child is not present when any other person is naked.

**15. Supervision**

- (1) The employer must ensure that a suitable, primary-duty chaperone - providing adequate and direct supervision- is engaged at the production company's expense.
- (2) Having regard to cl. 15.3, where five or more children are working at any one time, two chaperones should be engaged. For more than ten children, the number of chaperones will be dependent on the number of children, their ages, their roles, the time of day, the location and circumstance
- (3) (a) if the child is more than twelve (12) weeks old and less than six (6) years old, the child is to be supervised by;
  - (i) a parent or guardian of the child or a person nominated by the employer and authorised by the parent or guardian; or
  - (ii) a person with an early childhood qualification; or
  - (iii) a registered nurse, a registered midwife or a registered maternal and child health nurse; and(b) if the child is more than six (6) years old, the child is to be supervised by a parent or guardian of the child, or a person nominated by the employer and authorised by the parent or guardian, or by an adult with training or experience in the care of children of the age of the child to be supervised.
- (4) An employer must ensure that a supervisor does not have any other responsibilities while supervising children.
- (5) When travelling to and from work, the child should be accompanied by the chaperone, or a parentally approved alternative.

**16. Chaperones and House Mother/House Parents**

- (1). Chaperones and House Mother/House Parents contracted must have teaching, childcare qualifications or appropriate experience and/or nursing qualifications and a valid and clear driver's license.
- (2) In addition, they must have knowledge of the industry, and be familiar with:

- (a) Approved Code of Practice for young persons in the Entertainment Industry
- (b) The Occupational Safety in Health Act 1992 and regulations concerning the safety in employment of children
- (c) Standard conditions for child actors
- (d) Individual contract provisions for child actors
- (e) appropriate legislation for crimes of child pornography
- (f) The Convention on the Rights of the Child

(3) **Job Description of Chaperone:**

- (a) To drive or travel with children to and from set.
- (b) To coach children with their lines.
- (c) To supervise schoolwork, rest periods and meal breaks.
- (d) The chaperone is responsible for the child's general physical well being during the working day.
- (e) To ensure every child in their care is supervised at all times
- (f) to raise with the appropriate responsible person when child wellbeing is being affected and have the right of veto of any action after due negotiation has failed;
- (g) The obligation to inform parents/caregivers of any accident, illness or hospital visits of a child in their care as soon as practicable

(4) **Job Description of House Mother/House Parents and where an 'out of town' child is being accommodated by the production company:**

- (a) To provide for the support and general well being of child/children including: meals, all laundry (personal items, bedding etc).
- (b) To supervise after hours and weekend recreation, homework and script work.
- (c) To act as liaison between child and parent and production company if necessary.
- (d) The chaperone / house mother / house parent must be available day or night and should an emergency arise (such as illness) nothing must prevent the chaperone/house mother/house parents from taking immediate action (i.e. going to emergency clinic). If the chaperone/house mother/house parent is looking after more than one child the production company must provide an on-call chaperone/house mother/house parent to look after the other children.
- (e) If a chaperone is acceptable on every point but has a dependent, the chaperone must employ or arrange a 24 hour care giver for their own child/children so that there is no conflict of interest.
- (f) If after commencement of work the chaperone/house mother/house parents is/are found to be negligent in the duties set out in this agreement and this negligence is not rectified by

discussion, then it would be considered to be a breach of contract with the Employer and the Employer will find a replacement chaperone/house mother/house parents. In such circumstances, the appropriate responsible person shall ensure the supervision and wellbeing of all children until a replacement is found.

(g) When children are contracted the company shall contract a suitable housemother/houseparents. No more than three children are to be housed together.

(h) the chaperone/housemother will inform the parent as soon as practicable in the event of injury, illness or need for a hospital visit of any child in their care.

- (5) The Employer will liaise frequently with the parents and the care giver to monitor the safety and welfare of the child.
- (6) It may be satisfactory for a child working for a single day to be accompanied by their parent(s). For longer term or out of town engagements which would require a chaperone, the parent(s) may consent to fulfill the specified requirements of a chaperone and be engaged into this role.

## **17. Tutoring**

- (1) The Education Act must be complied with. This means that young actors of compulsory school age must not be engaged in work (whether as employees or independent contractors) in such a way that it has a detrimental effect on their education.
- (2) The Employer must allocate appropriate time, facilities and supervision for the completion of school work for all child actors, including those younger than 6 years old who are engaged in formal school programmes. Methods of complying include:
  - (a) **Short term engagements (1 month or less):** School work can be set by school, supervised by an appropriate tutor or chaperone.
  - (b) **Long term engagements (of more than 1 month):** Correspondence School can be a suitable way of complying with the Act.
- (3) Children should be provided with a separate space in which to do their schooling. This space should not be shared with other cast, extras etc.
- (4) On long term engagements, the Employer will ensure that children are allocated 10 hours per working week for schoolwork (exclusive of production days off). Any working day allocation of schoolwork time will not be broken into more than two periods except under

extreme circumstances. This allocation does not apply if the production takes place during non-school time (ie school holidays).

- (5) It is the responsibility of the parents to apply to the New Zealand Correspondence School if they wish the child to be educated by correspondence, as required by the Education Act 1989.

**18. Babies**

- (1) This clause applies to babies who are less than twelve (12) weeks old.
- (2) An employer must not employ a baby for more than one hour on any one day unless:
  - (a) a registered nurse, registered midwife or registered maternal and child health nurse is present at all times; and
  - (b) a parent or guardian of the baby is present at all times; and
  - (c) the registered nurse or registered midwife advises the employer that the baby is fit for employment; and
  - (d) the registered nurse or registered midwife advises the employer that the environment in which the baby is to be employed is unlikely to cause the baby to become distressed; and
  - (e) the employer follows the advice of the registered nurse or registered midwife in all matters that relate to the welfare of the baby.
- (3) An employer may employ a baby for one hour or less on any one day provided that:
  - (a) one of the baby's parents or guardians is present at all times; and
  - (b) the employer is satisfied on advice from the parent or guardian that:
    - (i) the baby was delivered full term and in good health; and
    - (ii) the baby's birthweight was at least three (3) kilograms; and
    - (iii) the baby has not had any post-natal problems; and
    - (iv) the baby is feeding successfully; and
    - (v) the baby's weight gain from birth has been satisfactory.
- (4) An employer who employs a baby must not allow the baby to be exposed to harmful lighting.
- (5) An employer must not allow makeup to be applied to a baby unless the makeup is non-irritating and uncontaminated.
- (6) An employer must not allow any person who is known by the employer to have a respiratory or skin infection to come into contact with the baby.

**TABLE A - ENTERTAINMENT and EXHIBITION**

Includes: Film, Television, Video, Commercials, Still Photography, Modelling and Shopping Centre Performances

| AGE                    | HOURS DURING WHICH CHILD MAY BE EMPLOYED | NUMBER OF DAYS OF EMPLOYMENT IN ANY PERIOD OF 7 DAYS | MAXIMUM EMPLOYMENT HOURS PER DAY |
|------------------------|--|--|----------------------------------|
| UNDER 6 MONTHS         | 9AM TO 6PM                               | 1  | 4 HRS                            |
| 6 MTHS & UNDER 2 YEARS | 9AM TO 6PM                               | 1  | 4 HRS                            |
| 2 YRS & UNDER 6 YRS    | 9AM TO 6PM                               | 3  | 4 HRS                            |
| 6 YRS & UNDER 11 YRS   | 6AM TO 10PM                              | 5  | 6 HRS                            |
| 11 YRS & UNDER 16 YRS  | 6AM TO 10PM                              | 5  | 8HRS                             |

**TABLE B - THEATRICAL PERFORMANCES**

| AGE                   | HOURS DURING WHICH CHILD MAY BE EMPLOYED | NUMBER OF DAYS OF EMPLOYMENT IN ANY PERIOD OF 7 DAYS | MAXIMUM EMPLOYMENT HOURS PER DAY |
|-----------------------|--|--|----------------------------------|
| UNDER 2 YEARS         | 9AM TO 6PM                               | 1  | 4 HRS                            |
| 2 YRS & UNDER 6 YRS   | 9AM TO 6PM                               | 3  | 4 HRS                            |
| 6 YRS & UNDER 10 YRS  | 9AM TO 10PM                              | 4  | 4 HRS                            |
| 10 YRS & UNDER 12 YRS | 9AM TO 11PM                              | 4  | 6 HRS                            |
| 12 YRS & UNDER 16 YRS | 9AM TO 11PM                              | 4  | 8 HRS                            |