

Employing Minors and Ensuring their Contracts are Enforceable

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In California, a contract with a minor (anyone under the age of 18) can generally be disaffirmed by the minor.¹ A disaffirmed contract is not enforceable. This law is meant to prevent adults from taking advantage of minors and is based on the belief that minors are easily exploitable because they may not fully understand a contract they have signed.² Needless to say, a contract invalidated by a child actor could jeopardize distribution of the motion picture in which the minor appears. Having to edit out the scenes of Macaulay Culkin from *Home Alone* would leave the producer with a handful of scenes and an incoherent plot that no one would pay to see. All of the producer's rights, including ownership of the actor's performance, the right to use his or her name and likeness to promote the picture, and options for future services, would be lost. Moreover, the producer would be unable to seek damages against the minor for any such losses since the minor has the right to disaffirm the contract.

California Family Code, §6751 offers a solution for producers who want to employ minors and ensure their contracts cannot be voided. This provision states, "A contract, otherwise valid, of a type described in Section 6750, entered into during minority, cannot be disaffirmed on that ground either during the minority of the person entering into the contract, or at any time thereafter, if the contract has been approved by the superior court in any county in which the minor resides or is employed or in which any party to the contract has its principal office in this state for the transaction of business." In other words, if the contract is approved by the court, a party to the contract cannot disaffirm it on the grounds that he or she was a minor when the contract was signed.

There are some limitations to the authority vested in courts to confirm minor contracts. Courts can only affirm the following types of contracts:

- An employment contract for artistic or creative services;
- A "contract pursuant to which a minor agrees to purchase, or otherwise secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic properties, or use of a person's likeness, voice recording, performance, or story of or incidents in his or her life, either tangible or intangible, or any rights therein for use in motion pictures, television, the production of sound recordings in any format now known or hereafter devised, the legitimate or living stage, or otherwise in the entertainment field"; and/or
- A contract where the minor is employed or agrees to render services as a participant or player in a sport.

Moreover, a court can only confirm a contract over which it has jurisdiction. A court has jurisdiction if it is located in a county where:

- The minor resides;
- The minor is employed; and/or

¹ CAL. FAM. CODE § 6710.

² Cheryl B. Preston & Brandon T. Crowther, *Infancy Doctrine Inquiries*, 52 SANTA CLARA L. REV. 47, 51 (2012).

- Any party to the contract has its principal office in California for the transaction of business. The party does not necessarily need to be a California entity.

If the contract falls within the provisions of §6751, the court has broad discretion to approve the contract.³ The courts are given this discretion because in the entertainment industry, where careers frequently begin at a young age, it is to the interest of minors that they be able to enter into contracts with employers on terms that are fair to both parties.⁴ In order to approve a contract, the court must determine that the contract is “fair and in the best interests of the minor.” Since there are no pre-approved templates that meet this standard, producers should use agreements with customary language familiar to judges. Additionally, any provisions that attempt to release the producer from liability for intentional wrongdoing, violations of law, or gross negligence are void as a matter of law and are unlikely to be confirmed.

To obtain court approval, it is not necessary for the minor, the minor’s parents/guardians, or the producer to appear in court before the judge. An experienced entertainment attorney can prepare the petition and other paperwork needed to obtain court approval.

Once the contract is approved, the minor will no longer be able to disaffirm it. The court’s approval will extend to the entire contract and all of its terms and provisions, including any options.⁵ The court will require the employer to deduct, until the minor turns 18 years old, 15% of the gross earnings for the minor’s services and deposit that 15% into the minor’s trust account held for the benefit of the minor. These accounts are referred to as Coogan Accounts.

Child Labor Laws

Apart from ensuring the contract is enforceable, a producer employing a minor also needs to carefully abide by the California Child Actor’s Bill (also known as the Coogan Act) and all California Child Labor Laws. Even for minors who are participants or contestants, the producer has to comply with all California Child Labor Laws that would apply had the minor been employed in California.

California Child Labor Laws are complex and vary depending on multiple factors, including the age of the minor and whether school is in session or not. For example, infants can only be employed for up to 2 hours each day (or up to 20 minutes per day if they are less than 6 months old),⁶ which is why producers often hire identical twins when employing infants. No minor can work more than 8 hours in a day or 48 hours in a week.⁷ Studio teachers must be present for minors under the age of 16 (how many studio teachers are required depends on the age of the minors and the number of minors on set).⁸ While school is in session, minors who attend regular school may not work the same number of hours as those who are tutored on set by studio

³ Warner Bros. Pictures v. Brodel, 192 P.2d 949, 953 (Cal. 1948).

⁴ *Id.*

⁵ *Id.* FAM. § 6751(d).

⁶ CAL. CODE REGS. title 8, § 11760.

⁷ CAL. LAB. CODE §§ 1308.7, 1392, 1308.7.

⁸ *Id.* title 8, § 11755.2.

teachers. Minors under the age of 16 must be accompanied by a parent or guardian who is within sight and sound of the minor at all times.⁹

All employers must obtain an Employer Permit if they employ minors in California.¹⁰ The minors cannot be employed in activities that are hazardous or detrimental to the health, safety, morals, or education of such minors.¹¹ A separate Child Performer Permit must be obtained for all minors who are between 15 days old and 18 years old, unless the minor has a high school diploma or proficiency certificate.¹² Babies under 15 days old cannot be permitted or filmed.

A violation of Child Labor Laws can result in civil and criminal penalties. Criminal violations of such laws are misdemeanors punishable by fines ranging up to \$10,000 or by confinement in the county jail for periods up to 6 months, or by both fine and imprisonment.¹³

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⁹ *Id.* title 8, § 11757.

¹⁰ *See id.* title 8, § 11752.

¹¹ *Id.*

¹² *Id.* title 8, § 11753.

¹³ CAL. LAB. CODE, §§ 1175, 1199, 1303, 1308, 1308.2, 1308.3, 1308.5, 1391, 1392, 1308.7, 1309 and 1309.5, EC 48454, 49182, and 49183.