# A PROPOSAL FOR ENFORCING MINORS' EMPLOYMENT CONTRACTS

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## I. INTRODUCTION

Like adults, minors often need employment. Some minors work for spending money and car insurance. Others work because their parents' income is too low to provide them with certain opportunities. Other minors need to work because they are emancipated and require income to support their own basic needs.

Contract law generally protects minors in their dealings with adults, and it renders contracts between minors and adults voidable. As a result, minors can generally disaffirm contracts even after they reach the age of majority. However, there are exceptions to this rule. For example, contracts for necessities with emancipated minors are enforceable. Furthermore, this exception would not necessarily apply to the non-emancipated minor entering into an employment agreement.

This concept, known as the infancy doctrine, may operate to dissuade employers from hiring minors. For example, employers with limited client-bases often rely on non-compete agreements to protect their customer lists and clients from departing employees. If these employers know that non-compete agreements are unenforceable against minors, these employers may not hire minors. As another example, many employers are now including arbitration agreements in their employment contracts and applications. These employers may

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become discouraged from hiring minors if courts will not enforce these arbitration agreements.

Some courts enforce minors' employment agreements because it is inequitable for minors to enjoy the benefits of employment while repudiating their contracts. Other courts apply the infancy doctrine in its truest form and permit minors to disaffirm their employment agreements.

This article proposes that courts should enforce minors' employment contracts only in limited circumstances. Courts should enforce minors' employment agreements only if the employment qualifies as a necessity and the minor is emancipated. Part II of this article discusses enforcing contracts against minors generally. Part III discusses cases addressing the enforceability of minors' employment contracts. Part IV proposes how courts should address minors' employment contracts. Part V concludes that courts should only enforce minors' employment contracts in certain narrow situations.

## II. ENFORCING MINORS' CONTRACTS

The law should protect minors from unfair bargains made with adults. However, there are circumstances in which minors should have the ability to bargain both with, and as, adults. Emancipated minors need food, clothing, and shelter. Therefore, they need employment to pay for such necessities. It is under the necessities exception of the infancy doctrine that such minors are permitted to engage in employment contracts with adults to help support themselves.

Courts recognized long ago that minors are too inexperienced to engage in dealings with more sophisticated adults. As a result, the courts developed the infancy doctrine. The infancy doctrine provides that contracts in which minors enter into are voidable.[1] This means, however, that such contracts are not automatically void.[2] Minors have the choice to disaffirm these contracts and release themselves from any obligations, or they can choose to affirm these contracts and perform

1. *See* Richard A. Bales & Matthew Miller-Novak, *A Minor Problem with Arbitration: A Proposal for Arbitration Agreements Contained in Employment Contracts of Minors*, 44 MCGEORGE L. REV. 339, 347 (2013) (citing 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN § 10:1 (West rev. 2d ed. 2005), *available at* Westlaw).

2. *Id.*; *see also* 5 RICHARD A. LORD, WILLISTON ON CONTRACTS § 9:2 (4th ed. 2010).

them as adults.[3] Minors can disaffirm these contracts when they are still minors, or they can do so shortly after reaching adulthood or becoming emancipated.[4] However, a minor's right to disaffirm a contract is not absolute. Minors must return any contractual benefit still in the minor's possession and return the adult party to the status quo if feasible.[5] Ultimately, the infancy doctrine was developed not only to protect minors, but also to discourage adults from contracting with minors.[6]

Furthermore, there are certain exceptions to the infancy doctrine. Courts often enforce contracts that minors enter into for certain necessities.[7] "Necessities" refers to "articles and services" that relate to minors' "well-being."[8] Courts do not categorically determine what is a necessity based merely on the identity of an article or service.[9] Instead, courts focus on the status of minors and their need for these articles or services when contracting for them.[10]

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3. Bales & Miller-Novak, *supra* note 1, at 347 (citing 1 KRAMER, *supra* note 1, at § 10:1).

4. *Id.* (citing 1 KRAMER, *supra* note 1, at § 10:1).

5. Cheryl B. Preston, *Cyberinfants*, 39 PEPP. L. REV. 225, 227 (2012) (citing RESTATEMENT (SECOND) OF CONTRACTS § 14 cmt. c (1981)) ("Disaffirmance does require that the minor return any benefit received as consideration on the contract, to the extent it is still in the minor's possession."); *see also* Cheryl B. Preston & Brandon T. Crowther, *Minor Restrictions: Adolescence Across Legal Disciplines, the Infancy Doctrine, and the Restatement (Third) of Restitution and Unjust Enrichment*, 61 U. KAN. L. REV. 343, 347 (2012) ("The 'retains benefit' defense, another narrow exception, is focused on the economic loss of the contracting adult. In most jurisdictions, the adult can require the minor to return the tangible remnant of the item sold to the minor, as long as it is still in the minor's possession, as a condition of the adult's duty to return the payment made by the minor. The minor's obligation extends no further.").

6. Michaelis v. Schori, 24 Cal. Rptr. 2d 380, 381 (Ct. App. 1993) (writing that the law's policy protects minors against their own immaturity while also discouraging adults from contracting with minors).

7. Bales & Miller-Novak, *supra* note 1, at 347 (citing 1 KRAMER, *supra* note 1, at § 10:2).

8. *Id.* (citing 1 KRAMER, *supra* note 1, at § 10:2 n.2).

9. *Id.* (citing 42 AM. JUR. 2D *Infants* § 61 (2010)).

10. *Id.* (citing 42 AM. JUR. 2D *Infants* § 61 (2010)); *see also* Cheryl B. Preston & Brandon T. Crowther, *Infancy Doctrine Inquiries*, 52 SANTA CLARA L. REV. 47, 52 (2012) [hereinafter *Infancy Doctrine Inquiries*] ("Society wants to allow minors to obtain items necessary for their survival where the minor has no other means to do so. We therefore encourage adults to enter such contracts by assuring merchants that minors' contracts for necessities will be binding. Applicability of this exception is

Some states have passed legislation that enforces minors' contracts based upon need.[11] For example, California does not permit minors to disaffirm contracts that provide minors with things necessary for their support when the minors' parents are not caring for them.[12] Conversely, courts will often not enforce minors' contracts when the minors have parents caring for them.[13] Thus, courts focus on the parents' roles in minors' lives when deciding whether to enforce contracts against minors.

States have also determined that enforcing minors' contracts is necessary to combat homelessness, and have legislated accordingly. Oregon enforces leases that minors enter into after they turn sixteen.[14] This statute "encourage[s] landlords to lease to minors" because landlords understand their leases with minors are enforceable.[15] Taking a different approach, Texas permits its minors to petition to have the capacity to contract if they are seventeen, or if they are sixteen and emancipated.[16] In either case, the teen must also manage her or his own financial affairs.[17]

Many states have legislated that emancipation results in the enforceability of minors' contracts.[18] Some states legislate that certain circumstances either result in automatic emancipation or are a factor in determining emancipation.[19] Some states have legislated that marriage

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based on the need of the infant at the time of contracting, rather than on the nature of the item contracted for. This approach limits the exception dramatically, and puts the burden on merchants to make a judgment whether an item is a necessity for a particular minor. Although society requires such an exception, the law limits its scope. Thus, if a minor contracts for what would generally be a necessity, but that minor has already been provided for by his parents or his parents are willing to provide for him, the contract is not binding and the minor is permitted to disaffirm it. Further, even when validly contracting for necessities, the minor is never held liable for more than the actual value of the necessities.").

11. Bales & Miller-Novak, *supra* note 1, at 347–48.

12. *Id.* at 347 n.80 (citing CAL. FAM. CODE § 6712 (West 2004)).

13. *Id.* at 347–48 (citing Young v. Weaver, 883 So. 2d 234, 238–40 (Ala. Civ. App. 2003)).

14. *Id.* at 348 (citing OR. REV. STAT. § 109.697 (2011)).

15. *Id.*

16. *Id.* (citing TEX. FAM. CODE ANN. § 31.001(a) (West 2008)).

17. *Id.*

18. Preston & Crowther, *supra* note 10, at 55.

19. *Id.*

results in emancipation.[20] Twenty-five states have legislated that courts may order emancipation.[21] States permitting court-ordered emancipation have generally set the minimum age for the process at sixteen.[22] In the employment context, some states permit employers to hire minors that are fourteen years and older.[23] States permitting minors to work may enforce minors' employment contracts in certain circumstances.[24]

Thus, courts may enforce minors' contracts if their contracts are for necessities, they are emancipated, or state legislation otherwise provides that their contracts are enforceable. In the employment context, courts have considered all of the above factors when determining whether to enforce minors' employment contracts. The results are mixed, as demonstrated in Part III.

## III. ENFORCING MINORS' EMPLOYMENT CONTRACTS

An employment contract is a contract. Accordingly, the infancy doctrine should generally apply. However, some courts have wrestled with whether to enforce non-compete and arbitration clauses contained within minors' employment contracts. Some courts will not enforce these agreements, while other courts will. When courts enforce these clauses against minors, the courts have primarily reasoned that they should not permit minors to maintain the benefits of their employment agreements while repudiating those provisions they do not like. This part of the article will first discuss how courts have handled minors' non-compete agreements historically. Then, it will discuss how courts have handled arbitration agreements within minors' employment contracts.

### A. *CASES ADDRESSING MINORS' NON-COMPETE AGREEMENTS*

Some courts have enforced non-compete agreements against minors even though the employment contracts containing the non-compete agreements were voidable.[25] These courts refused to allow

20. *Id.* at 55 n.39.

21. *Id.* at 56 n.41.

22. *Id.* at 56–57 n.42.

23. *Id.* at 58.

24. *Id.* (citing 5 LORD, *supra* note 2, at § 9:8; 42 AM. JUR. 2D *Infants* § 54 (2011)).

25. R.F. Chase, *Enforceability of Covenant Not to Compete in Infant's Employment Contract*, 17 A.L.R.3d 863 (1968).

these minors to use the training they gained to later harm the employer.[26]

For example, in *Mutual Milk & Cream Co. v. Prigge*, the plaintiff milk company hired a driver to deliver its milk.[27] The milk company hired the driver while he was still a minor.[28] The driver signed a non-compete agreement disallowing him from soliciting the milk company's customers for three years after either party terminated his employment.[29] The driver abruptly quit his position, and he began working for a competitor.[30] The driver then started soliciting the milk company's customers.[31] The milk company filed an action to restrain the driver from competing for its customers.[32] The driver pled that the contract was not enforceable because he was a minor at the time he signed it.[33] An injunction was granted, and the Appellate Division of the New York Supreme Court upheld the injunction.[34]

The court reasoned that there was nothing unusual or advantageous regarding the terms of the milk company's non-compete agreement.[35] The court further reasoned that even though minors can typically disaffirm their contracts, minors should not use knowledge gained from an employer to harm that employer.[36] Because minors cannot surrender this knowledge, an injunction is an appropriate remedy.[37] The court also reasoned that employers are less likely to offer employment to minors if they cannot protect the harmful use of their training and information.[38]

In another case, the Supreme Court of Pennsylvania determined that non-compete agreements are enforceable against minors even though the employment contract itself is voidable.[39] In *Pankas v. Bell*,

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26. *Id.*
27. Mut. Milk & Cream Co. v. Prigge, 98 N.Y.S. 458, 458 (App. Div. 1906).
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.* at 458–59.
36. *Id.* at 459.
37. *Id.*
38. *Id.*
39. Pankas v. Bell, 198 A.2d 312, 315 (Pa. 1964).

a minor entered into a contract with a hair stylist to not compete within ten miles of downtown Pittsburg for two years after leaving the stylist's employment.[40] Two years after entering into the contract with the hair stylist, the minor left the stylist and became a partner with another beautician.[41] The stylist sought to enjoin the minor's competition in court, and the trial court granted the injunction.[42]

On review, the minor argued, among other things, that the contract was unenforceable because he was a minor when he entered into the contract.[43] The court acknowledged that "hornbook law" dictates that minors' contracts are generally voidable.[44] However, minors also are required to return any benefits gained from their contracts if feasible.[45] The court reasoned that permitting minors the absolute right to disaffirm their contracts may result in discouraging employers from hiring minors.[46]

The court also acknowledged that the infancy doctrine protects minors against agreements with more experienced adults.[47] Nevertheless, the court stated that this protection was not created for minors to use the infancy doctrine to engage in unconscionable business practices.[48] The court concluded that it is proper to preclude minors from exploiting the benefits that employers provide them.[49]

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40. *Id.* at 312.

41. *Id.* at 312–13.

42. *Id.* at 313.

43. *Id.*

44. *Id.*

45. *Id.* at 314 (citing Gen. Casmir Pulaski Bldg. & Loan Ass'n. v. Provident Trust Co., 12 A.2d 338 (Pa. 1940); RESTATEMENT (FIRST) RESTITUTION § 139 cmt a. (1937)).

46. *Id.* at 315.

47. *Id.*

48. *Id.*

49. *Id.* [A] dance instructor who signed, while still a minor, an employment contract with a covenant not to compete, was restrained by injunction from breaking the negative covenant. Noting that the employment contract was "of material benefit and advantage" to the instructor, the court said that the law should not allow the protection granted to minors to be used as an instrument for deliberately evading "the dictates of common sense, good conscience, and a sense of justice." Where a contract is without taint of fraud or overreaching, concluded the court, and is for the benefit of a minor, the minor should not be permitted to disaffirm where such action would result in injustice and damage to the other contracting party. R.F. Chase, *supra* note 25, at 863 (citing Niedland v. Kulka, 64 Pa. D. & C. 418 (1948)).

Not all courts agree with *Mutual Milk* and *Pankas*. For example, the Ohio Supreme Court held, in *Eagle Dairy Co. v. Dylag*, that minors can disaffirm their employment contracts without returning their employers to the "statu[s] quo."[50] In that case, a minor worked for the Valley Farms Dairy Company (Valley Farms).[51] The owner of Valley Farms sold the company, including its customer lists, to Eagle Dairy Company (Eagle).[52] After this sale, the minor became an employee of Eagle.[53] When he began working for Eagle, the minor signed a non-compete agreement that assured he would not compete with Eagle in the general area for a year following the termination of his employment.[54] After working for Eagle for over a year, the minor terminated his employment.[55] The minor then went to work for Community Creamery Company (Community), taking some of Eagle's customers with him.[56] Eagle filed suit to enjoin the actions of the minor and Community.[57]

Reviewing the agreement, the Eighth District Court of Appeals of Ohio wrote that a minor "can withdraw from a contract without placing the other party in statu[s] quo," unless the minor is able to return the party to the status quo.[58] However, the court found that returning a party to the status quo is "not a condition precedent."[59] Thus, even if minors cannot return the other party to the status quo, minors can still disaffirm their contracts.[60]

Eagle argued that the court should enjoin the minor from competing, citing *Mutual Milk*.[61] The court distinguished the minor's actions from *Mutual Milk*, stating that the minor had taken clients that he knew well before Eagle hired him.[62] Further, the minor did not sell

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50. Eagle Dairy Co. v. Dylag, 168 N.E. 754, 755 (Ohio 1929).
51. *Id.* at 754.
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.* at 755 (citing Lemmon v. Beeman, 15 N.E. 476 (Ohio 1888)).
59. *Id.*
60. *Id.*
61. *Id.* (citing Mut. Milk & Cream Co. v. Prigge, 98 N.Y.S. 458, 458 (N.Y. App. Div. 1906)).
62. *Id.*

the customer lists to Community.[63] In *Mutual Milk*, the minor took customers that he met while working for the plaintiff company.[64] The court further reasoned that enforcing the contract against the minor would keep him from doing business in the neighborhood he was familiar with.[65] The court concluded that the infancy doctrine precluded Eagle from enforcing the contract against the minor.[66]

In addition to minors' non-compete agreements, courts have also addressed whether they should enforce arbitration agreements contained within minors' employment contracts. Just as courts differ as to whether minors can disaffirm non-compete agreements, they are equally divided on the ability of minors to negate arbitration agreements.

### B. *CASES ADDRESSING MINORS' ARBITRATION AGREEMENTS*

Arbitration agreements are agreements contained within contracts or standing alone where two parties agree to resolve disputes through binding arbitration rather than litigation in courts, which is often more costly. Employers may require employees to sign these enforceable agreements as a condition of employment. Congress enacted the Federal Arbitration Act (FAA) to permit one party to an arbitration agreement to seek enforcement of arbitration agreements in federal courts. The FAA states that arbitration agreements are valid, irrevocable, and enforceable, except where the law allows for the revocation of any contract.[67] The United States Supreme Court has held that arbitration agreements are enforced or invalidated just as any other contract under the law.[68] The Supreme Court has also held that arbitration agreements are enforceable even when employment claims arise from statute instead of the contract itself.[69] Thus, arbitration agreements are enforceable contracts for contractual and statutory

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* "[T]he court ruled that a dairy could not enforce a covenant not to compete contained in the employment contract of a minor driver and salesman, on the ground that minors are not liable on any form of contract except contracts for necessaries." R.F. Chase, *supra* note 25, at 863 (citing J. E. Harshbarger Dairy v. Hoover, 13 Pa. D. & C. 701 (1929)).

67. 9 U.S.C. § 2 (2013).

68. First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 943 (1995).

69. Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26 (1991).

employment claims, and are generally vulnerable to state contract law defenses.[70]

Courts addressing minors' arbitration agreements have handled the issue in two ways. Some courts have determined that the infancy doctrine allows minors to disaffirm arbitration agreements like any other contract. Other courts do not permit minors to disaffirm and retain the benefits of their employment contracts while casting aside their arbitration agreements.

In *Stroupes v. Finish Line, Inc.*, the United States District Court for the Eastern District of Tennessee held that employment contracts are not enforceable against minors.[71] In *Stroupes*, a sixteen-year old girl worked at a cookie factory in a mall.[72] A manager at Finish Line's retail store in the mall approached the girl and asked her to apply for a position at Finish Line.[73] The girl was given an employment application which contained an arbitration agreement.[74] She signed the agreement and began working for Finish Line.[75] After she was employed, she filed claims against the manager and Finish Line for Title VII sexual harassment and other claims arising out of the same occurrences.[76] The manager and Finish Line moved to compel arbitration.[77]

The court cited the FAA in holding that arbitration agreements are enforceable on the same grounds as any other contract.[78] Courts must consequently look to state contract law to determine the validity of any arbitration agreement.[79] The girl argued that the arbitration agreement was not enforceable against her because the infancy doctrine

70. For a more detailed discussion on enforcing arbitration agreements, *see* Bales & Miller-Novak, *supra* note 1, at 341–46.

71. *See* Stroupes v. Finish Line, Inc., No. 1:04-cv-133, 2005 WL 5610231, at *5 (E.D. Tenn. Mar. 16, 2005).

72. *Id.* at *1.

73. *Id.*

74. *See id.*

75. *See id.*

76. *Id.*

77. *Id.*

78. *Id.*; 9 U.S.C. § 2 (2013).

79. *Stroupes*, 2005 WL 5610231, at *2 (citing First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944 (1995); *accord* Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 281 (1995); Taylor v. Butler, 142 S.W.3d 277, 284 (Tenn. 2004)).

protected her, as she was a minor.[80]

The defendants cited *Dodson v. Shrader* in arguing the employment agreement was enforceable.[81] In *Dodson*, the minor purchased a truck, used it for nine months, and then attempted to disaffirm the contract.[82] The court in *Dodson* was primarily concerned that allowing the minor to disaffirm the contract in that circumstance would lead to "trickery" and create bad public policy because sellers could not recover for the depreciation of goods.[83] The court in *Stroupes* explained that *Dodson* was a narrow exception to the infancy doctrine that only applied to consumer goods, and did not apply to minors' employment contracts.[84]

The defendants next cited *Sheller v. Frank's Nursery & Crafts, Inc.*, a federal case in the Northern District of Illinois enforcing an employment contract against a minor under Illinois law.[85] The court in *Sheller* held that allowing a minor to disaffirm an arbitration agreement allows a minor to use the infancy doctrine as a "sword" instead of a "shield."[86] According to the *Sheller* court, the infancy doctrine was not created to use offensively, but rather, was created to protect minors.[87] The court in *Stroupes* disagreed with the *Sheller* court's reasoning because an arbitration agreement only relates to the selection of a judicial forum.[88] The defendants also argued that the *Sheller* court held that the infancy doctrine's protection of minors becomes irrelevant in employment contracts where adults must sign the same contract.[89] The court in *Stroupes* compared the *Sheller* court's reasoning to the consumer context, rejected this reasoning, and stated this reasoning would "eviscerate the infancy doctrine altogether."[90] Finally, the

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80. *Id.* at *2.

81. *Id.* (citing Dodson v. Shrader, 824 S.W.2d 545 (Tenn. 1992)).

82. *Id.* (citing *Dodson*, 824 S.W.2d at 546).

83. *Id.* at *3 (citing *Dodson*, 824 S.W.2d at 550).

84. *Id.*

85. *Id.* (citing Sheller v. Frank's Nursery & Crafts, Inc., 957 F. Supp. 150, 152–53 (N.D. Ill. 1997)). Part III of this article discusses *Sheller* and its reasoning in greater detail.

86. *Id.* (citing *Sheller*, 957 F. Supp. at 153).

87. *See id.* at *4 (citing *Sheller*, 957 F. Supp. at 153).

88. *Id.* at *3.

89. *Id.* at *4 (citing *Sheller*, 957 F. Supp. at 153).

90. *Id.* ("To extend the example to the consumer context, any contract for the purchase of an automobile signed by minors and adults alike is not voidable by minors,

defendants cited *Sheller* to support their argument that minors cannot disaffirm a contract while at the same time using the contract as a basis for a lawsuit.[91] The *Stroupes* court also rejected this argument and reasoned that a Title VII claim is a statutory claim.[92] A Title VII claim is not a benefit of a contract.[93] Accordingly, the court overruled the defendants' motion to compel arbitration in *Stroupes*.[94] In addition to *Stroupes*, two Texas cases also allowed minors to invoke the infancy doctrine to overcome motions to compel arbitration.

In 2004, a Texas appellate court refused to compel two minors to arbitrate in *In re Mexican Restaurants, Inc.*[95] That case involved one girl, who was seventeen, and another girl who was fifteen.[96] Both of the minor girls signed an agreement stating that the FAA would control all disputes arising from their employment.[97] After certain events occurred at work, the two girls filed suit against their restaurant employer and two of its employees for "sexual harassment, assault and battery, illegal restraint, as well as other tort and statutory claims."[98] The restaurant employer moved to compel the girls to arbitrate these claims.[99] The trial court denied the restaurant's motions, and the restaurant filed a writ of mandamus.[100] On review, the appellate court cited section 31.001 of the Texas Family Code, and noted that minors may petition a court to remove their disabilities to contract.[101] However, neither minor had done so.[102]

Turning to the infancy doctrine, the court discussed whether either of the girls was emancipated.[103] The court stated that

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because adults are bound by the same agreement. If such were true, the infancy doctrine, permitting minors to disaffirm their contracts, would cease to exist.").

91. *Id.* (citing *Sheller*, 957 F. Supp. at 153–54).

92. *See id.*

93. *See id.*

94. *Id.* at *5.

95. *In re* Mexican Restaurants Inc., Nos. 11-04-00154-CV, 11-04-00155-CV, 2004 WL 2850151, at *1 (Tex. App. Dec. 2, 2004).

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *See id.*

determining if a minor is emancipated is a question of fact "determined from the statements and conduct of the parent and other surrounding circumstances."[104] The court also wrote that "express or implied" emancipation requires a parental agreement to relinquish rights to control the minors' income.[105] Turning to the facts, the court noted that both girls were living in their own apartment instead of with their parents.[106] However, the girls both gave their paychecks to their father, who handled the money and gave the girls an allowance.[107] Due to the fact their father continued to exercise control over their earnings, the court concluded that the two girls were not emancipated.[108]

Furthermore, the court held that the girls were permitted to disaffirm their employment contracts.[109] When the girls terminated their employment with the restaurant and filed suit, they disaffirmed their contractual obligations with the restaurant.[110] Accordingly, the court denied the restaurant's motions to arbitrate the girls' claims.[111]

In *PAK Foods Houston, LLC v. Garcia*, another Texas appellate court permitted a minor to disaffirm her employment contract.[112] In that case, a 16-year old minor worked for PAK Foods (PAK) as an at-will employee.[113] However, the minor had an arbitration agreement with PAK.[114] The minor filed a personal injury suit against PAK for injuries she sustained at work.[115] PAK filed a motion to compel arbitration arguing that the minor was required to arbitrate her claim.[116] The minor cited *In Re Mexican Restaurants*, responding that she was a minor, and therefore the arbitration agreement was not enforceable against her.[117] PAK countered that the court should

104. *Id.* (citing Durham v. I.C.T. Ins. Co., 283 S.W.2d 413, 415 (Tex. Civ. App. 1955)).
105. *Id.*
106. *Id.* at *2.
107. *Id.*
108. *Id.*
109. *Id.*
110. *Id.*
111. *Id.*
112. PAK Foods Houston, LLC v. Garcia, 433 S.W.3d 171, 178 (Tex. App. 2014).
113. *Id.* at 176–77.
114. *Id.* at 173.
115. *Id.*
116. *Id.*
117. *Id.* at 176–77. The minor also argued that she did not sign the agreement. *Id.* at

distinguish *In Re Mexican Restaurants* because the minors' arbitration agreement in *In Re Mexican Restaurants* was contained within an employment contract.[118] PAK argued that its minor employee was at-will, and the arbitration agreement was not contained within an employment contract.[119] The court rejected PAK's argument.[120] The court held that the arbitration agreement was a contract, and the minor was entitled to disaffirm the arbitration agreement.[121]

PAK further argued that the arbitration agreement was enforceable as an agreement by necessity because the medical expenses the minor was suing for were necessary.[122] The court also disagreed with this claim.[123] The court listed necessaries as "food, lodging, clothing, medicine, medical attention, and . . . attorney's fees in some circumstances."[124] The agreement at issue concerned the minor's employment and the choice of judicial forum.[125] Thus, the contract was not based on necessity.[126]

The dissent in *PAK Foods* argued that courts should not permit minors to enjoy an employment contract's benefits and disaffirm those portions the minor finds "burdensome or undesirable."[127] Citing *Dairyland County Mutual Insurance Co. v. Roman*, the dissent argued that even though minors may generally disaffirm their contracts, they cannot dissect the contract, keep what they want, and ditch what they do not.[128] The dissent reasoned that permitting this "cherry pick[ing]" would result in minors having difficulty finding work.[129] The dissent's reasoning is on par with cases in other states that enforce minors' employment agreements. The following cases all hold that courts should not allow minors to use the infancy doctrine as a sword rather

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118. *Id.* at 177.

119. *Id.*

120. *Id.* at 178.

121. *Id.* at 177.

122. *Id.* at 178.

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* at 179 (Frost, C.J., dissenting).

128. *Id.* (citing Dairyland Cnty. Mut. Ins. Co. v. Roman, 498 S.W.2d 154, 158 (Tex. 1973)).

129. *Id.*

than a shield.

In *Sheller by Sheller v. Frank's Nursery & Crafts, Inc.*, the United States District Court in Northern Illinois held that an employment contract is enforceable against a minor.[130] *Sheller* involved minor females who brought suit for sexual discrimination under Title VII 42 U.S.C. § 2000e after their termination.[131] The minors alleged that their assistant manager subjected them to a hostile work environment.[132] The minors had signed an arbitration agreement contained within their employment applications.[133] Frank's Nursery filed a motion to compel arbitration.[134]

The court wrote that minors can generally disaffirm their contracts.[135] A minor's right may harm the other party, however, the minor generally maintains the discretion to disaffirm a contract.[136] Furthermore, the court noted there are exceptions to this rule.[137]

The court held that the infancy doctrine is a "shield."[138] It is not a "sword" to be used offensively.[139] The court concluded that it would run afoul of the infancy doctrine's policy to disaffirm the arbitration agreement.[140] The court reasoned that it would not permit the minor to disaffirm the contract because the arbitration agreement was "irrelevant."[141] Specifically, the court determined that all employees, including adults, were required to sign the contract for employment.[142] Accordingly, the court compelled arbitration.[143]

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130. Sheller by Sheller v. Frank's Nursery & Crafts, 957 F. Supp. 150, 153–54 (N.D. Ill. 1997).

131. *Id.* at 152.

132. *Id.*

133. *Id.*

134. *Id.* at 151–52.

135. *Id.* at 153 (citing Iverson v. Scholl Inc., 483 N.E.2d 893, 897 (Ill. App. Ct. 1985); *accord* Fletcher v. Marshall, 632 N.E.2d 1105, 1107 (Ill. App. Ct. 1994)).

136. *Id.* (citing *Iverson*, 483 N.E.2d at 897).

137. *Id.*

138. *Id.* (citing Shepherd v. Shepherd, 97 N.E.2d 273, 282 (Ill. 1951)).

139. *Id.* (citing *Shepherd*, 97 N.E.2d at 282).

140. *Id.*

141. *Id.*

142. *Id.*; *see also* Robinson v. Food Serv. of Belton, Inc., 415 F. Supp. 2d 1227, 1231 n.1 (D. Kan. 2005) (in dicta, the U.S. District Court in Kansas cited *Sheller*, writing that it was unlikely that the Kansas Supreme Court would allow minors to disaffirm their employment contracts while retaining the benefit of employment).

143. *Sheller*, 957 F. Supp. at 154.

In *Douglas v. Pflueger*, the Hawaii Supreme Court also held that courts can enforce employment contracts and their arbitration agreements against minors.[144] However, the court did not enforce the arbitration agreement at issue due to the lack of assent and consideration. In *Pflueger*, the Pflueger Acura car dealership hired a seventeen-year old minor as a lot technician.[145] The minor received an employee handbook during orientation that contained an arbitration agreement on the twentieth page.[146] The arbitration agreement stated that "[a]ny and all claims arising out of the employee's employment with the Company and his/her termination shall be settled by final binding arbitration."[147] The minor also signed an acknowledgement on the last page of the employee handbook.[148] The acknowledgment stated that the minor understood the handbook was informational only and not a contract.[149] The handbook further stated that the minor's employment was "at-will," and the handbook's terms were not conditions of employment and subject to change.[150]

While at work, the minor's supervisor sprayed the minor's buttocks with an air hose and injured him.[151] The minor subsequently sued Pflueger for sexual harassment and sexual assault.[152] Pflueger filed a motion to compel arbitration, which the circuit court granted.[153] The minor appealed.[154]

On review, the Hawaii Supreme Court wrote that the "threshold question" was whether the minor had an "absolute right" to disaffirm the contract under the infancy doctrine.[155] The court noted that Hawaii recognizes the infancy doctrine, and minors may generally disaffirm their contracts during minority or shortly after reaching the age of majority.[156] But the court also stated that minors' contracts for goods

144. Douglass v. Pflueger Hawaii, Inc., 135 P.3d 129, 131 (Haw. 2006).
145. *Id.* at 132.
146. *Id.*
147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.* at 133.
152. *Id.*
153. *Id.*
154. *Id.*
155. *Id.* at 134.
156. *Id.* (citing Jellings v. Pioneer Mill Co., 30 Haw. 184 (1927); *see also* Zen v.

and services are enforceable if "necessary for his health and sustenance."[157] Because neither party contended that the minors' employment was a necessity, the court stated that the infancy doctrine would generally apply to the minor's contract.[158]

However, the court turned to the state's child labor statute, Hawaii Revised Statute section 390–2(a) and noted that the legislature passed a law permitting minors that are sixteen to seventeen years of age to enter into employment without parental consent.[159] A minor is "merely required to present his or her certificate of age to a prospective employer, which the minor obtains from the DLIR [Department of Labor and Industrial Relations] after producing an acceptable proof of age document."[160] In contrast, minors under the age of sixteen are required to obtain a certificate and parental consent.[161] Before 1969, the legislature required all minors to obtain a certificate with parental consent.[162]

In light of this statute, the court determined that the Hawaii legislature viewed minors over the age of fifteen as close enough to adulthood, making them competent enough to enter into employment contracts.[163] As a result of this determination, the court held that the minor could not disaffirm his employment contract.[164]

Nevertheless, the court found that in order to force the minor to arbitrate, the minor must have entered into a valid agreement to do so.[165] In Hawaii, an arbitration agreement must be in writing, unambiguous, and possess bilateral consideration.[166] Pflueger and the minor agreed that the handbook constituted a writing.[167] Regarding

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Koon Chan, 27 Haw. 369 (1923); *see also* McCandless v. Lansing, 19 Haw. 474 (1909)).

157. *Id.* at 135 (citing LORD, *supra* note 2, at § 9:18; *see also* Creech v. Melnik, 556 S.E.2d 587, 590–91 (N.C. Ct. App. 2001); *see also* Garay v. Overholtzer, 631 A.2d 429, 443–45 (Md. 1993)).

158. *Id.* at 136.

159. *Id.* at 136–38.

160. *Id.* at 138.

161. *Id.*

162. *See id.*

163. *Id.* at 138 (citing HAW. REV. STAT. § 431:10–203 (West 2005)).

164. *Id.* at 139.

165. *Id.*

166. *Id.* at 140.

167. *Id.*

assent, the court held there was no mutual assent.[168] Specifically, the court noted that the minor merely signed an acknowledgement stating the he understood the policies of the handbook.[169] Furthermore, the acknowledgement expressly stated that the handbook was not a contract, and the handbook only presented "guidelines" for informational purposes.[170] Regarding bilateral consideration, the court found that the handbook permitted the employer to modify its terms at any time at Pflueger's sole discretion.[171] Thus, the court held that the agreement was illusory and without mutual assent.[172] The court refused to compel the minor to arbitrate.[173]

## IV. A PROPOSAL FOR ENFORCING MINORS' EMPLOYMENT CONTRACTS IN LIMITED CIRCUMSTANCES

The infancy doctrine as it applies to employment contracts should remain focused on protecting minors. However, courts should not address minors' employment agreements in a manner that discourages employers from hiring all minors. Employment contracts are not consumer contracts, and adults contracting with minors in the employment context are often providing the minor with as much of a service as the minor is providing the adult.

Cases like *PAK Foods*, *Mutual Milk*, and *Stroupes*, which permit minors to disaffirm their contracts with employers, give seemingly absolute protection to minors. However, this absolute protection in the employment context could result in many employers, especially those with sensitive trade-secrets or customer data, from employing minors.

Cases like *Pankas*, *Sheller*, and *Pflueger*, refusing to permit minors to disaffirm their contracts, have reasoned that courts should not permit minors to harm their employers and keep employment benefits while casting off the disadvantages. This reasoning is flawed because statutory claims and tort claims are not "benefits" of employment. Statutory claims and tort claims exist to remedy harms suffered during employment. But these courts were also concerned that allowing minors to use the infancy doctrine to harm employers would

168. *Id.* at 141.
169. *Id.* at 142.
170. *Id.* at 141–42.
171. *Id.* at 144.
172. *Id.*
173. *Id.* at 145.

dissuade adults from employing minors. This is a significant concern.

To strike the balance, courts should treat employment as any other necessity. After all, emancipated minors need employment to purchase the necessities that courts currently recognize. Like the common law necessity exception to the infancy doctrine, courts should focus on the status of the minor at the time of contracting for employment. Due to the fact that so many states have passed legislation allowing minors to emancipate themselves, courts should use this legislation as a primary factor in determining whether to enforce minors' employment contracts. Thus, employers who have employment contracts that they deem necessary for their business will feel assured that their agreements with emancipated minors are enforceable. Employing this rationale will ensure that minors needing employment will have secure employers available.

## V. CONCLUSION

Courts are currently split when faced with enforcing minors' employment contracts. Some courts have perhaps overprotected minors in a manner that could lead to their own detriment. Others have over-protected employers' interests. Courts should strike the balance between these two interests by focusing on the minors' statuses while entering into their contracts. As a result, courts can safeguard minors regarding their immaturity while also ensuring that there are employers willing to employ emancipated minors in need of employment.