The Fair Labor Standards Act of 1938, as Amended

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

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THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED

(29 U.S.C. 201, et seq.)

"This publication contains the original text of the Fair Labor Standards Act of 1938 as set forth in 52 Stat. 1060, revised to reflect the changes effected by the amendments listed in this footnote, which may be found in official text at the cited pages of the Statutes at Large.

This publication contains 52 Stat. 1060, as amended by:

(1) The Act of August 9, 1939
(2) Section 404 of Reorganization Plan No. II of 1939
(3) Sections 3(c)-3(f) of the Act of June 26, 1940
(4) The Act of October 29, 1941
(5) Reorganization Plan No. 2 of 1946
(6) The Portal-to-Portal Act of 1947
(7) The Act of July 20, 1949
(8) The Fair Labor Standards Amendments of 1949
(9) Reorganization Plan No. 6 of 1950
(12) The Act of August 20, 1957
(14) Section 22 of the Act of August 28, 1958
(15) The Act of July 12, 1960
(17) The Equal Pay Act of 1963
(19) Section 8 of the Department of Transportation Act
(20) The Act of September 11, 1967, amending Title 5 of the U.S.C.
(21) Section 906 of the Education Amendments of 1972
(22) The Fair Labor Standards Amendments of 1974
(24) Section 1225 of the Panama Canal Act of 1979
(28) Omnibus Budget Reconciliation Act of 1990
(29) The Act of November 15, 1990

The original text of the Fair Labor Standards Act of 1938, as revised by the amendments through 1960, is set in the "Century" typeface. Added or amended language as enacted by subsequent amendments is represented by several different typefaces as follows:

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In cases where annual changes are to be made in provisions, as in the case of the gradual phase-out of exemptions, the changes are shown immediately following the provision to which they apply and are inclosed in brackets.

The footnotes in this revision show where prior changes have been made and refer to the specific amendments relied upon so that a comparison may be made with the official text.

This revised text has been approved by the Office of the Solicitor, U.S. Department of Labor.
FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED
(29 U.S.C. 201, et seq.)

To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Fair Labor Standards Act of 1938.”

Finding and Declaration of Policy

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce. The Congress further finds that the employment of persons in domestic service in households affects commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

Definitions

SEC. 3. As used in this Act—
(a) “Person” means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.
(b) “Commerce” means trade, commerce, transmission, or communication among the several States or between any State and any place outside thereof.
(c) “State” means any State of the United States or the District of Columbia or any Territory or possession of the United States.
(d) “Employer” includes any person acting directly or indirectly in the interest of an employee in relation to an employee and includes a public agency,
but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.
(e)(1) Except as provided in paragraphs (2), (3), and (4), the term “employee” means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—
(A) any individual employed by the Government of the United States—
(i) as a civilian in the military departments (as defined in section 102 of title 5, United States Code),
(ii) in any executive agency (as defined in section 105 of such title),
(iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,
(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or
(v) in the Library of Congress;
(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and
(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—
(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and
(ii) who—
(I) holds a public elective office of that State, political subdivision, or agency,
(II) is selected by the holder of such an office to be a member of his personal staff,
(III) is appointed by such an officeholder to serve on a policymaking level,
(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office,

* As amended by section 4(a) of the Fair Labor Standards Amendments of 1949.
* Public agencies were specifically excluded from the Act's coverage until the Fair Labor Standards Amendments of 1966, when Congress extended coverage to "employees of a State or a political subdivision thereof, employee (1) in a hospital, institution, or school referred to in the last sentence of subsection (e) of this section, or (2) in the operation of a railway or carrier referred to in such sentence. ″ **"
Sec. 3(e)(2)(V)

"(V)" is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(3) For purposes of subsection (u), such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

(4) (A) The term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if—

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

(i) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

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* As amended by section 5(h) of the Fair Labor Standards Amendments of 1949.

* Reorganization Plan No. 2 of 1945 provided that the functions of the Children's Bureau and of the Chief of the Children's Bureau under the Act as originally enacted be transferred to the Secretary of Labor.

* As added by section 4(a) of the Fair Labor Standards Amendments of 1965, effective April 15, 1966.

* As amended by section 3(b) of the Fair Labor Standards Amendments of 1949.
manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor\textsuperscript{12} determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

\( m \) “Wage” paid to any employee includes the reasonable cost, as determined by the Secretary of Labor,\textsuperscript{11} to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: \textit{Provided}, That the cost of board, lodging or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: \textit{Provided further}, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of (1) 45 percent of the applicable minimum wage rate during the year beginning April 1, 1990, and (2) 50 percent of the applicable wage rate after March 31, 1991,\textsuperscript{14} except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (9) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

\( n \) “Resale” shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: \textit{Provided}, That the sale is recognized as a bona fide retail sale in the industry.\textsuperscript{13}

\( o \) Hours worked.—In determining for the purposes of sections 6 and 7 the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.\textsuperscript{14}

\( p \) “American vessel” includes any vessel which is documented or numbered under the laws of the United States.

\( q \) “Secretary” means the Secretary of Labor.

\( r \)(1) “Enterprise” means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement.

\( A \) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or

\( B \) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or

\( C \) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

\( 2 \) For purposes of paragraph (1), the activities performed by any person or persons—

\( A \) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool,\textsuperscript{10} elementary or secondary school, or an institution of higher education (regardless of whether or not

\textsuperscript{11} Ibid.

\textsuperscript{12} As amended by Reorganization Plan No. 4 of 1950, set out under section 6(a).

\textsuperscript{13} As amended by section 5 of the Fair Labor Standards Amendment of 1938, effective April 1, 1990. Prior to April 1, 1990, the percentage amount was 40.

\textsuperscript{14} Section 303 of the Fair Labor Standards Amendment of 1949. (The original language of section 3(a) was restored by the Fair Labor Standards Amendments of 1965.)

\textsuperscript{10} "A preschool" was added by the Education Amendments of 1972.
such hospital, institution, or school is operated for profit
or not for profit, or
(B) in connection with the operation of a street, subur-
ban or interurban electric railway, or local trolley or
motorbus carrier, if the rates and services of such
railway or carrier are subject to regulation by a state or
local agency regardless of whether or not such railway or
carrier is public or private or operated for profit or not
for profit, or
(C) in connection with the activities of a public
agency, shall be deemed to be activities performed for a
business purpose.
(a)(1) "Enterprise engaged in commerce or in the
production of goods for commerce" means an enterprise
that—
(A)(i) has employees engaged in commerce or in
the production of goods for commerce, or that has
employees handling, selling, or otherwise working on
goods or materials that have been moved in or
produced for commerce by any person;
and
(ii) is an enterprise whose annual gross volume of
sales made or business done is not less than
$500,000 (exclusive of excise taxes at the retail
level that are separately stated);14
(B) is engaged in the operation of a hospital, an
institution primarily engaged in the care of the sick,
the aged, or the mentally ill or defective who reside
on the premises of such institution, a school for
mentally or physically handicapped or gifted
children, a preschool, elementary or secondary
school, or an institution of higher education
(regardless of whether or not such hospital, institu-
tion, or school is public or private or operated for
profit or not for profit); or
(C) is an activity of a public agency.
(2) Any establishment that has as its only regular
employees the owner thereof or the parent, spouse,
child, or other member of the immediate family of such
owner shall not be considered to be an enterprise
engaged in commerce or in the production of goods
for commerce or a part of such an enterprise. The
sales of such an establishment shall not be included
for the purpose of determining the annual gross
volume of sales of any enterprise for the purpose of
this subsection.

14 As amended by section 3(a) of the Fair Labor Standards Amendments of 1985. Prior to
April 1, 1990, the dollar volume test for enterprise coverage (except in the case of an enter-
prise comprised exclusively of one or more retail or service establishments or one engaged
in construction or reconstruction; or one engaged in laundering, cleaning, or repairing clothing
or linens; or one described in section 3(a)(1)(B) or (C) was $200,000. For retail enterprises,
the dollar volume test was $300,000. There was no dollar volume test for the other enter-
prises.
Sec. 4(b)

The Classification Act of 1949 as amended. The Secretary may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Secretary in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Secretary, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(c) The principal office of the Secretary shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

(d)(1) The Secretary shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages and overtime coverage established by this Act, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent. Such report shall also include a summary of the special certificates issued under section 14(b).

(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 13 of this Act, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

(3) The Secretary shall conduct a continuing study on means to prevent curtailment of employment opportunities for manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). The first report of the results of such study shall be transmitted to the Congress not later than one year after the effective date of the Fair Labor Standards Amendments of 1974. Subsequent reports on such study shall be transmitted to the Congress at two-year intervals after such effective date. Each such report shall include suggestions respecting the Secretary's authority under section 14 of this Act.

(e) Whenever the Secretary has reason to believe that in any industry under this Act the competition of foreign producers in United States markets or in markets abroad, or both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines that such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete report of his findings and determinations to the President and to the Congress: Provided, That he may also include in such report information on the increased employment resulting from additional exports in any industry under this Act as he may determine to be pertinent to such report.

(f) The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to individuals employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this Act with respect to such individuals. Notwithstanding any other provision of this Act, or any other law, the Civil Service Commission is authorized to administer the provisions of this Act with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 16(b) of this Act.

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92 See footnote 20.
93 Ibid.
94 Ibid.
95 As amended by Reorganization Plan No. 6 of 1966.
96 Ibid.
98 The Civil Service Commission was renamed the Office of Personnel Management by Reorganization Plan No. 2 of 1978 (92 Stat. 3763).
proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers; 45

(3) if such employee is employed in American Samoa, in lieu of the rate or rates provided by this subsection or subsection (b), not less than the applicable rate established by the Secretary of Labor in accordance with recommendations of a special industry committee or committees which he shall appoint pursuant to sections 5 and 8. The minimum wage rate thus established shall not exceed the rate prescribed in paragraph (1) of this subsection; 46

(4) if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection, for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

(5) if such employee is employed in agriculture, not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977.

(b) Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this Act by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1).

(c)(1) The rate or rates provided by subsection (a)(1) shall be applicable in the case of any employee in Puerto Rico who is employed by—

(A) the United States,

(B) an establishment that is a hotel, motel or restaurant,

(C) any other retail or service establishment that employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs, or

(D) any other industry in which the average hourly wage is greater than or equal to $4.65 an hour.

(2) In the case of any employee in Puerto Rico who is employed in an industry in which the average hourly wage is not less than $4.00 but not more than $4.64, the minimum wage rate applicable to such employee shall be increased on April 1, 1990, and each April 1 thereafter through April 1, 1994, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on April 1, 1994.

(3) In the case of an employee in Puerto Rico who is employed in an industry in which the average hourly wage is less than $4.00, except as provided in paragraph (4), the minimum wage rate applicable to such employee shall be increased on April 1, 1990, and each April 1 thereafter through April 1, 1995, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on April 1, 1995.

(4) In the case of any employee of the Commonwealth of Puerto Rico, or a municipality or other governmental entity of the Commonwealth, in which the average hourly wage is less than $4.00 an hour and who was brought under the coverage of this section pursuant to an amendment made by the Fair Labor Standards Amendments of 1965 (Public Law 90-150), the minimum wage rate applicable to such employee shall be increased on April 1, 1990, and each April 1 thereafter through April 1, 1996, by equal amounts (rounded to the nearest 5 cents) so that the highest minimum wage rate prescribed in subsection (a)(1) shall apply on April 1, 1996.

(d)(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and

45 Section 6(a)(2) of the Act of June 28, 1940 (54 Stat. 618).
propriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Secretary of Labor) paid to performers, including announcers, on radio and television programs;

**(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

**(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

**(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or

**(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a)), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek.

**(8) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 6 (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provided a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

**(9) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection—

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the Secretary of Labor as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time; and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

**(10) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) shall be creditable toward overtime compensation payable pursuant to this section.

(i) No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the

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**Footnotes:**

7. See footnote 56.
8. Paragraphs (5) and (7) provide non-exclusionary provisions of section 1 of the Act of July 20, 1949 (53 Stat. 448), which Act was repealed as of the effective date of the Fair Labor Standards Amendments of 1961.
9. Ibid.
10. See footnote 25.
11. Amendment provided by section 7 of the Fair Labor Standards Amendments of 1961. See also footnote 56.
Sec. 7(i)

regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 6, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commission, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(i) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated subsection (a) if, pursuant to an agreement or understanding arrived at between the employer and employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the weekwork of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of forty-eight hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(k) No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to Section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days, compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(l) No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a).

(m) For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer—

(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek, compensation at a rate not less than one and one-half times the regular rate at which he is employed.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.

(n) In the case of an employee of any employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such

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46 Effective January 1, 1976, the complete overtime exemption provided by section 6(c)(2)(A) of the Fair Labor Standards Amendments of 1974 was replaced by the more limited exemption in section 7(i). The present overtime standard—the lesser of 216 hours or the average number of hours (as determined by the Secretary of Labor) in tours of duty of employees in work periods of 28 consecutive days—became effective on January 1, 1978. During calendar year 1977 the overtime standard was 216 hours. During 1978 the overtime standard was 235 hours, and during 1979 the overtime standard was 260 hours. The complete overtime exemption remains applicable only to public agencies employing less than 5 employees in fire protection or law enforcement activities. See section 1309(b)(1), infra.

47 The results of the Secretary's study were published in the Federal Register on September 6, 1968. The Secretary determined hours standards for law enforcement employees at 175 and for fire protection employees at 215 in a 28-day period (43 FR 40,318).
employer if (1) the employee’s employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee’s regular employment.

(o) 111 (1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only—

(A) pursuant to—

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employees engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

(A) the average regular rate received by such employee during the last 3 years of the employee’s employment, or

(B) the final regular rate received by such employee, whichever is higher.

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time, shall be permitted by the employee’s employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) For purposes of this subsection—

(A) the term “overtime compensation” means the compensation required by subsection (a), and

(B) the terms “compensatory time” and “compensatory time off” mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee’s regular rate.

(p) 111 (1) If an individual who is employed by a State, political subdivision of a State, or an interstate governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual’s option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation.

111 As added by section 2(a) of the Fair Labor Standards Amendments of 1986, effective April 15, 1986.

compensation under this section if the public agency—

(A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

(B) facilitates the employment of such employees by a separate and independent employer, or

(C) otherwise affects the condition of employment of such employees by a separate and independent employer.

(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee’s option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(3) If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(4) Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is—

(1) provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(2) designed to provide reading and other basic skills at an eighth grade level or below; and

(3) does not include job specific training.

Wage Orders in American Samoa

SEC. 8 (a) The policy of this Act with respect to industries or enterprises in American Samoa engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 6(a) but for section 6(c).

The Secretary of Labor shall from time to time convene an industry committee or committees, appointed pursuant to section 5, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 6 by employers in American Samoa engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce in any such industry or classification therein, and who but for section 6(a)(3) would be subject to the minimum wage requirements of section 6(a)(1). Minimum rates of wages established in accordance with this section which are not equal to the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) or section 6(a) shall be reviewed by such a committee once during each biennial period, beginning with the biennial period commencing July 1, 1968, except that the Secretary, in his discretion, may order an additional review during any such biennial period.

(b) Upon the convening of any such industry committee, the Secretary shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this Act. The committee shall recommend to the Secretary the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry

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*As added by section 7 of the Fair Labor Standards Amendments of 1968.*
(c) The industry committee shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of that in effect under paragraph (1) or (2) of section 6(a) (as the case may be)) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

(d) The industry committee shall file with the Secretary a report containing its findings of fact and recommendations with respect to the matters referred to it. Upon the filing of such report, the Secretary shall publish such recommendations in the Federal Register and shall provide by order that the recommendations contained in such report shall take effect upon the expiration of 15 days after the date of such publication.64

(e) Orders issued under this section shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Secretary finds necessary to carry out the purposes of such orders, to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates established therein.70

(f) Due notice of any hearing provided for in this section shall be given by publication in the Federal Register and by such other means as the Secretary deems reasonably calculated to give general notice to interested persons.

Attendance of Witnesses

SEC. 9. For the purpose of any hearing or investigation provided for in this Act, the provisions of section 9 and 10 (relating to the attendance of witnesses and the production of books, papers and documents) of the Federal Trade Commission Act of September 16, 1914 as amended (U.S.C., 1946 edition, title 18, sec. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary of Labor72 and the industry committees.

Court Review

SEC. 10.73 (a) Any person aggrieved by an order of the Secretary issued under section 8 may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, and as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify (including provision for the payment of an appropriate minimum wage rate), or set aside such order in whole or in part, so far as it is applicable to the petitioner.74 The review by the court shall be limited to questions of law, and findings of fact by such industry com-

64 See footnote 23.
65 As amended by section 6(c) of the Fair Labor Standards Amendments of 1961.
66 Ibid.
67 See footnote 23.
68 Ibid.
69 Section 10(a) as amended by section 6(f) of the Fair Labor Standards Amendments of 1955, and as further amended as noted.
70 Section 22 of the Act of August 28, 1946 (72 Stat. 948).
committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceeding before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Secretary’s order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.

Investigations, Inspections, Records, and Homework Regulations

SEC. 11. (a) The Secretary of Labor or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. Except as provided in section 12 and in subsection (b) of this section, the Secretary shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 12, the Secretary shall bring all actions under section 17 to restrain violations of this Act.

(b) With the consent and cooperation of State agencies charged with the administration of State labor laws, the Secretary of Labor may, for the purpose of carrying out his functions and duties under this Act, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Every employer subject to any provision of this Act or any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Secretary as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 7 (p) (3) may not be required under this subsection to keep a record of the hours of the substitute work.

(d) The Secretary is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this Act, and all existing regulations or orders of the Administrator relating to industrial homework are hereby continued in full force and effect.

Child Labor Provisions

SEC. 12. (a) No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: Provided, That any such shipment or delivery for shipment of such goods by a purchaser who acquired

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99 See footnote 25.
98 Ibid.
97 See footnote 25.
96 Ibid.
95 See footnote 25.
94 Added by section 8(a)(2) of the Fair Labor Standards Amendment of 1960, effective April 15, 1964.
93 Section 9 of the Fair Labor Standards Amendment of 1949, as amended by Reorganiza-
tion Plan No. 6 of 1950.
them in good faith in reliance on written assurance from
the producer, manufacturer, or dealer that the goods were
produced in compliance with the requirements of this sec-
tion, and who acquired such goods for value without notice
of any such violation, shall not be deemed prohibited by
this subsection. And provided further, that a prosecution
and conviction of a defendant for the shipment or delivery
for shipment of any goods under the conditions herein pro-
hibited shall be a bar to any further prosecution against
the same defendant for shipments or deliveries for shipment
of any such goods before the beginning of said prosecution.83
(b) The Secretary of Labor,84 or any of his authorized
representatives, shall make all investigations and inspec-
tions under section 11(a) with respect to the employment of
minors, and, subject to the direction and control of the
Attorney General, shall bring all actions under section 17
to enjoin any act or practice which is unlawful by reason of
the existence of oppressive child labor, and shall admin-
ister all other provisions of this Act relating to op-
pressive child labor.
(c) No employer shall employ any oppressive child labor
in commerce or in the production of goods for commerce
in any enterprise engaged in commerce or in the pro-
duction of goods for commerce.85
(d) In order to carry out the objectives of this section,
the Secretary may by regulation require employers to
obtain from any employee proof of age.

Exemptions

SEC. 13.86 (a) The provisions of sections 6 (except sec-
tion 6(d) in the case of paragraph (l) of this subsection)87
and 7 shall not apply with respect to—
(1) any employee employed in a bona fide executive,
administrative, or professional capacity (including
any employee employed in the capacity of academic ad-
ministrative personnel or teacher in elementary or secon-
dary schools), or in the capacity of outside salesman (as
such terms are defined and delimited from time to
time by regulations of the Secretary, subject to the
provisions of the Administrative Procedure Act, ex-
cept that an employee of a retail or service establish-
ment shall not be excluded from the definition of
employee employed in a bona fide executive or ad-
ministrative capacity because of the number of hours
in his workweek which he devotes to activities not
directly or closely related to the performance of ex-

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83 As amended by section 10(a) of the Fair Labor Standards Amendments of 1949.
84 See Sections 5 and 22.
85 See Section 10(b) of the Fair Labor Standards Amendments of 1961.
86 Section 13 as amended by section 11 of the Fair Labor Standards Amendments of 1949; by
the Fair Labor Standards Reorganization Plan No. 6 of 1960; and as further amended by the Fair Labor Standards
87 As amended by the Education Amendments of 1972, 86 Stat. 265 at 375, effective July 1,
1972.
88 Added by section 11 of the Fair Labor Standards Amendments of 1977, effective
November 1, 1977.
89 The last clause of section 13(a)(3) of the Act was added by section 4(d) of the Fair Labor
Standards Amendments of 1977, effective January 1, 1979. See also section 10(b)(3) of the
Act, as added by the 1977 Amendments.
Sec. 13(a)(6)(B)

spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock, or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 14; or

(8) any employee employed in connection with the publication of any weekly, semi-weekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) * * *(Repealed)

[Note: Section 13(a)(9) (relating to motion picture theater employees) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in section 13(b)(27).]

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) * * *(Repealed)

[Note: Section 13(a)(11) (relating to telegraph agency employees) was repealed by section 10 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption from the overtime provisions only in section 13(b)(23), which was repealed effective May 1, 1976.]

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13) * * *(Repealed)

[Note: Section 13(a)(13) (relating to small logging crews) was repealed by section 23 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for such employees from the overtime provisions only in Section 13(b)(23).]

(14) * * *(Repealed)

[Note: Section 13(a)(14) (relating to employees employed in growing and harvesting of shade grown tobacco) was repealed by section 9 of the Fair Labor Standards Amendments of 1974. The 1974 amendments created an exemption for certain tobacco producing employees from the overtime provisions only in Section 13(b)(22). The section 13(b)(22) exemption was repealed, effective January 1, 1978, by section 6 of the Fair Labor Standards Amendments of 1977.]

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary).

(b) The provisions of section 7 shall not apply with respect to—

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or

(2) any employee of an employer engaged in the operation of a common carrier by rail and subject to the provisions of part I of the Interstate Commerce Act; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or

(4) * * *(Repealed)

[Note: Section 13(b)(4) (relating to employees in the canning, processing, marketing, freezing, curing, storing, packaging for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof) was repealed, effective May 1, 1976, by section 11 of the Fair Labor Standards Amendments of 1974.]

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

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* Prior to the Fair Labor Standards Amendments of 1936, the section 13(a)(6) exemption was applicable to all agricultural employees.
* As amended by the Fair Labor Standards Amendments of 1966 (which deleted the words "priced and" which formerly preceded the word "published").
* As amended by the Department of Transportation Act, 80 Stat. 931, which substituted "Secretary of Transportation" for "Interstate Commerce Commission".
* Section 204 of the original Motor Carrier Act is now codified at 49 U.S.C. 2(12).
(6) any employee employed as a seaman; or

(7) * * * (Repealed)

[Note: Section 13(b)(7) (relating to any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier) was repealed, effective May 1, 1976, by section 21 of the Fair Labor Standards Amendments of 1974. * * *]

(8) * * * (Repealed)

[Note: Section 19(b)(8) (relating to any employee employed by a hotel, motel, or restaurant) was repealed, effective January 1, 1979, by section 14 of the Fair Labor Standards Amendments of 1977.]

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(10)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or

(11) any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a); or

(18) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes, * * * or

(19) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an agent, or for the raising of livestock, either on its own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 6(a)(1), * * *

(20) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations; or

(21) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; * * * or

(22) any employee engaged (A) in the transportation and preparation for transportation of fruits and vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; * * *

(23) any driver employed by an employer engaged in the business of operating taxicabs; or

(24) any employee (A) engaged in the transportation of sugar beets and sugar cane, or (B) engaged in the processing of sugar beets and sugar cane, if employed by an employer engaged in the transportation or processing of sugar beets and sugar cane, * * *

(Repealed)
banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs) was repealed, effective May 1, 1976, by section 15 of the Fair Labor Standards Amendments of 1974.\textsuperscript{101}

(19) \textsuperscript{**} (Repealed)

[Note: Section 13(b)(19) (relating to any employee of a bowling establishment) was repealed, effective May 1, 1976, by section 16 of the Fair Labor Standards Amendments of 1974.]

(20) Any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be,\textsuperscript{102} or

[Note: Section 6(c)(3) of the Fair Labor Standards Amendments of 1974 provided as follows: “The Secretary of Labor shall in the calendar year beginning January 1, 1976, conduct (A) a study of the average number of hours in tours of duty in work periods in the preceding calendar year of employees (other than employees exempt from section 7 of the Fair Labor Standards Act of 1938 by section 13(b)(20) of such Act) of public agencies who are employed in fire protection activities, and (B) a study of the average number of hours in tours of duty in work periods in the preceding calendar year of employees (other than employees exempt from section 7 of the Fair Labor Standards Act of 1938 by section 13(b)(20) of such Act) of public agencies who are employed in law enforcement activities (including security personnel in correctional institutions). The Secretary shall publish the results of each such study in the Federal Register.” The results of the Secretary’s study were published in the Federal Register on September 6, 1983. The Secretary determined hours standards for law enforcement employees at 171 and for fire protection employees at 212 in a 28-day period (48 FR 40,518).]

(21) Any employee who is employed in domestic service in a household and who resides in such household; or

(22) \textsuperscript{**} (Repealed)

[Note: Section 13(b)(22) (relating to employees employed in the growing and harvesting of shade grown tobacco) was repealed, effective January 1, 1978, by section 5 of the Fair Labor Standards Amendments of 1977.]

(23) \textsuperscript{**} (Repealed)

[Note: Section 13(b)(23) (relating to any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under section 13(a)(2), who is engaged in handling telegraphic messages for the public) was repealed, effective May 1, 1976, by section 10 of the Fair Labor Standards Amendments of 1974.]

(24) Any employee who is employed with his spouse by a non-profit educational institution to serve as the parents of children—

(A) who are orphans or one of whose natural parents is deceased, or\textsuperscript{103}

(B) who are enrolled in such institution and reside in residential facilities of the institution, while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

(25) \textsuperscript{**} (Repealed)

[Note: Section 13(b)(25) (relating to any employee engaged in ginning cotton for market in any place of employment located in a county where cotton is grown in commercial quantities) was repealed by section 6(a) of the Fair Labor Standards Amendments of 1977, and is replaced by new section 13(i), added by section 6(b) of those Amendments, which provides a more limited overtime exemption for such employees. Both changes were effective January 1, 1978.]

(26) \textsuperscript{**} (Repealed)

[Note: Section 13(b)(26) (relating to any employee who is engaged in the processing of sugar beets, sugar beet molasses, or sugarcane into sugar (other than refined sugar) or syrup was repealed by section 7(a) of the Fair Labor Standards Amendments of 1977, and is replaced by new section 13(i), added by section 7(b) of those Amendments, which provides a more limited overtime exemption for such employees. Both changes were effective January 1, 1978.]

\textsuperscript{101} Ibid.

\textsuperscript{102} Prior to January 1, 1975, section 13(b)(20) exempted “any employee of a public agency who is employed in fire protection or law enforcement activities (including security personnel in correctional institutions). A partial overtime exemption for public agencies having 5 or more such employees is provided by section 706 of the Act.

\textsuperscript{103} A minimum wage exemption for these employees was repealed by the Fair Labor Standards Amendments of 1965.
(27) any employee employed by an establishment which is a motion picture theater;\textsuperscript{167} or

(28) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;\textsuperscript{168} or

(29)\textsuperscript{169} any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and (B) receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed.

(c)(1) Except as provided in paragraphs (b) or (a), the provisions of section 12 relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living unless he is so employed, if such employee—

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of section 13(a)(4)(A)) required to be paid at the wage rate prescribed by section 6(a)(5),

(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

(9) The provisions of section 12 relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 12 relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(4)\textsuperscript{170}(A) An employer or group of employers may apply to the Secretary for a waiver of the application of section 12 to the employment for not more than eight weeks in any calendar year of individuals who are less than twelve years of age, but not less than ten years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that—

(i) the crop to be harvested is one with a particularly short harvesting season and the application of section 12 would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

(ii) the employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

(iii) the level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) individuals age twelve and above are not available for such employment; and

(v) the industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that—

(i) the individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) such individuals be employed under such waiver

(I) for not more than eight weeks between June 1 and October 15 of any calendar year, and (II) in accordance

\textsuperscript{167} A minimum wage exemption for these employees was repealed by the Fair Labor Standards Amendments of 1974.
\textsuperscript{168} Ibid.
\textsuperscript{169} Added by section 4(b) of the Fair Labor Standards Amendments of 1977, effective January 1, 1978.
\textsuperscript{170} As added by section 8 of the Fair Labor Standards Amendments of 1977, effective November 1, 1977.
with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(d) The provisions of sections 6, 7, and 12 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

(e) The provisions of section 7 shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 6(a)(3), except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 7 if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 6(a)(3), that economic conditions warrant such action.111

(f) The provisions of sections 6, 7, 11, and 12 shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than any State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.112, 12

(g) The exemption from section 6 provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment which controls, is controlled by, or is under common control with, another establishment which controls the activities of which is not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated.)

(h) The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

(1) is employed by such employer—

(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek; compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 7.

(i) The provisions of section 7 shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek; compensation at a rate not less than one and one-half times the regular rate at which he is employed. No

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111 Section 3 of the American Samoa Labor Standards Amendments of 1964.
of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this Act before the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period.

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment, whichever is greater;

(ii) in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments,

(II) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment, whichever is greater; or

(iii) in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in (I) similar establishments of the same employer in the same general

Learners, Apprentices, Students, and Handicapped Workers

SEC. 14. (a) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

(b)(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 or not less than $1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion

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114 Added by section 1(b) of the Fair Labor Standards Amendments of 1977, effective January 1, 1978.
metropolitan area in which such establishment is located, (II) similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or (III) other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term "student hours of employment" means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than $1.30 an hour, whichever is the higher, of adult full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than $1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall prescribe standards and requirements to ensure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

(4)(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

(B) If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed six, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed six—

(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate.

(D) To minimize paperwork for, and to encourage, small businesses to employ students under special certificates issued under paragraphs (1) and (2), the Secretary shall, by regulation or order, prescribe a simplified application form to be used by employers in applying for such a certificate for the employment of not more than six full-time students. Such an application shall require only—

(i) a listing of the name, address, and business of the applicant employer,

(ii) a listing of the date the applicant began business, and

(iii) the certification that the employment of such full-time students will not reduce the full-time employment

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opportunities of persons other than persons employed under special certificates.

(C) The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are—

(A) lower than the minimum wage applicable under section 6,

(B) commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and

(C) related to the individual’s productivity.

(2) The Secretary shall not issue a certificate under paragraph (1) unless the employer provides written assurances to the Secretary that—

(A) in the case of individuals paid on an hourly rate basis, wages paid in accordance with paragraph (1) will be reviewed by the employer at periodic intervals at least once every six months, and

(B) wages paid in accordance with paragraph (1) will be adjusted by the employer at periodic intervals, at least once each year, to reflect changes in the prevailing wage paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.

(3) Notwithstanding paragraph (1), no employer shall be permitted to reduce the hourly wage rate prescribed by certificate under this subsection in effect on June 1, 1986, of any handicapped individual for a period of two years from such date without prior authorization of the Secretary.

(4) Nothing in this subsection shall be construed to prohibit an employer from maintaining or establishing work activities centers to provide therapeutic activities for handicapped clients.

(5)(A) Notwithstanding any other provision of this subsection, any employee receiving a special minimum wage at a rate specified pursuant to this subsection or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. An employee or the employee’s parent or guardian may file such a petition for and in behalf of the employee or in behalf of the employee and other employees similarly situated. No employee may be a party to any such action unless the employee or the employee’s parent or guardian gives consent in writing to become such a party and such consent is filed with the Secretary. 

(B) Upon receipt of a petition filed in accordance with subparagraph (A), the Secretary within ten days shall assign the petition to an administrative law judge appointed pursuant to section 3105 of title 5, United States Code. The administrative law judge shall conduct a hearing on the record in accordance with section 554 of title 5, United States Code, with respect to such petition within thirty days after assignment.

(C) In any such proceeding, the employer shall have the burden of demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

(D) In determining whether any special minimum wage rate is justified pursuant to subparagraph (C), the administrative law judge shall consider—

(i) the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured; and

(ii) the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity.

(E) The administrative law judge shall issue a decision within thirty days after the hearing provided for in subparagraph (B). Such action shall be deemed to be a final agency action unless within thirty days the Secretary grants a request to review the decision of the administrative law judge. Either the petitioner or the employer may request review by the Secretary within fifteen days of the date of issuance of the decision by the administrative law judge.

(F) The Secretary, within thirty days after receiving a request for review, shall review the record and either adopt the decision of the administrative law judge or issue exceptions. The decision of the administrative law judge, together with any exceptions, shall be deemed to be a final agency action.

(G) A final agency action shall be subject to judicial review pursuant to chapter 7 of title 5, United States Code. An action seeking such review shall be brought within thirty days of a final agency action described in subparagraph (F).

(d) The Secretary may by regulation or order provide that sections 6 and 7 shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws.

114 As amended by the Act of October 14, 1986 (100 Stat. 1229).
Prohibited Acts

Sec. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Secretary of Labor issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce of goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful; 119

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Secretary issued under section 14;

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee; 120

(4) to violate any of the provisions of section 12;

(5) to violate any of the provisions of section 11(c) or any regulation or order made or continued in effect under the provisions of section 11(d), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect. 121

(b) For the purposes of subsection (a)(1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

Penalties

Sec. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 15(a)(3) of this Act shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 15(a)(3), including without limitation, employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 17 in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation as the case may be, owing to such employee under section 6 or section 7 of this Act by an employer liable therefor under the provisions of this subsection or (2) legal or equitable

119 See footnote 25.
118 As amended by section 18(a) of the Fair Labor Standards Amendments of 1949.
117 See footnote 25.
116 Section 12 of the Fair Labor Standards Amendments of 1938 contains special discrimination provisions applicable to public agencies.
115 As amended by section 18(b) of the Fair Labor Standards Amendments of 1949.

14 The Portal-to-Portal Act of 1947 relieves employers from certain liabilities and penalties under this Act in circumstances specified in this Act. See also section 23(a) of the Fair Labor Standards Amendments of 1938, which relieves certain public agencies of certain liabilities under the Act prior to April 18, 1938.
140 Amendment provided by section 4(a) of the Portal-to-Portal Act of 1947.
relief is sought as a result of alleged violations of section 15(a)(3).\textsuperscript{145}

(c) The Secretary\textsuperscript{128} is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of the unpaid minimum wages or overtime compensation and an equal amount as liquidated damages.\textsuperscript{134} The right provided by subsection (b) to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 6 and 7 or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary under this subsection for the purposes of the statute\textsuperscript{127} of limitations provided in section 6(a) of the Portal-to-Portal Act of 1947, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.\textsuperscript{128}

\[\text{(d) In any action or proceeding commenced prior to, on, or after the date of enactment of this subsection, no employer shall be subject to any liability or punishment under this Act or the Portal-to-Portal Act of 1947 on account of his failure to comply with any provision or provisions of such Acts (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 13(f) is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section 6(a) (3) at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.}\]

\[\text{(e) Any person who violates the provisions of section 12, relating to child labor, or any regulation issued under that section, shall be subject to a civil penalty of not to exceed $10,000 for each employee who was the subject of such a violation. Any person who repeatedly or willfully violates section 6 or 7 shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be—}\]

\[\text{(1) deducted from any sums owing by the United States to the person charged;}\]

\[\text{(2) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor;}\]

\[\text{(3) ordered by the court, in an action brought for a violation of section 15(a)(4) or a repeated or willful violation of section 15(a)(2)\textsuperscript{131}, to be paid to the Secretary.}\]

Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated.
by the Secretary. Except for civil penalties collected for violations of section 12, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 2 of an Act entitled "An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes" (29 U.S.C. 9a). Civil penalties collected for violations of section 12 shall be deposited in the general fund of the Treasury.  

Injunction Proceedings

SEC. 17. The district courts, together with the United States District Court for the District of the Canal Zone, the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 15, including in the case of violations of section 15(a)(2) the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this Act (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 6 of the Portal-to-Portal Act of 1947).

Relation to Other Laws

SEC. 18. (a) No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

(b) Notwithstanding any other provision of this Act (other than section 19(f)) or any other law—

(1) any Federal employee in the Canal Zone engaged in employment of the kind described in section 5102(b)(7) of title 5, United States Code, or

(2) any employee employed in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, shall have his basic compensation fixed or adjusted at a wage rate which is not less than the appropriate wage rate provided for in section 6(a)(1) of this Act (except that the wage rate provided for in section 6(b) shall apply to any employee who performed services during the workweek in a work place within the Canal Zone), and shall have his overtime compensation set at an hourly rate not less than the overtime rate provided for in section 7(a)(1) of this Act.

Separability of Provisions

SEC. 19. If any provision of this Act or the application of such provision to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Approved, June 25, 1938.

184

184 Paragraph (1), as amended by Public Law 90-83, 81 Stat. 222, omit reference to other employees covered under paragraph (1) of this subsection as enacted in the Fair Labor Standards Amendments of 1966, section 306, whose compensation requirements under such Amendments are now incorporated in §5 U.S.C. 5541 and 5 U.S.C. 5544.

185 Paragraph (2) was formerly paragraph (2) of subsection (b) as enacted in the Fair Labor Standards Amendments of 1966, section 306. It was reenacted in the amendment by Public Law 90-83, 81 Stat. 222, which omitted the former paragraph (2) referring to employees described in 10 U.S.C. 7474 because of repeal of the latter provision by Public Law 89-544, 80 Stat. 563.

186 The Fair Labor Standards Amendments of 1949 were approved October 26, 1949; the Fair Labor Standards Amendments of 1955 were approved August 12, 1955; the American Samoa Labor Standards Amendments were approved August 1, 1946; the Fair Labor Standards Amendments of 1961 were approved May 3, 1961; the Fair Labor Standards Amendments of 1966 were approved September 25, 1966; the Fair Labor Standards Amendments of 1974 were approved April 8, 1974; the Fair Labor Standards Amendments of 1977 were approved November 1, 1977; the Fair Labor Standards Amendments of 1980 were approved November 13, 1980; and the Fair Labor Standards Amendments of 1989 were approved November 17, 1989.

181 As amended by section 3101 of the Omnibus Budget Reconciliation Act of 1990.

ADDITIONAL PROVISIONS OF THE ACT OF NOVEMBER 15, 1990
(104 Stat. 2871)

[PUBLIC LAW 101-583]

[101ST CONGRESS] [FIRST SESSION]

AN ACT

To eliminate "substantial documentary evidence" requirement for minimum wage determination for American Samoa, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled.

[Section 1 of the Act of November 15, 1990 amends the Fair Labor Standards Act of 1938, and is incorporated in its proper place in the Act.]

SEC. 2. REGULATIONS CONCERNING CERTAIN EMPLOYEES.

Not later than 90 days after the date of enactment of this Act, the Secretary of Labor shall promulgate regulations that permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers as defined in such regulations to qualify as exempt executive, administrative, or professional employees under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)). Such regulations shall provide that if such employees are paid on an hourly basis they shall be exempt only if their hourly rate of pay is at least 6 1/2 times greater than the applicable minimum wage rate under section 6 of such Act (29 U.S.C. 206).

Approved November 15, 1990.

LEGISLATIVE HISTORY—S. 2390:

CONGRESSIONAL RECORD, Vol. 136 (1990):
Aug. 4, considered and passed Senate.
Oct. 18, considered and passed House, amended.
Oct. 27, Senate concurred in House amendments.
ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1989

(Public Law 101-157)

[101ST CONGRESS] [FIRST SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938 to increase the minimum wage, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That this Act may be cited as the “Fair Labor Standards Amendments of 1989.”

[Sections 2; 3(a), (c), and (d); 4; 5; 7; and 9 of the Fair Labor Standards Amendments of 1989 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

PREPARATION OF COVERAGE

SEC. 3 * * *

(b) PRESERVATION OF COVERAGE.—

(1) IN GENERAL.—Any enterprise that on March 31, 1990, was subject to section 5(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) and that because of the amendment made by subsection (a) is not subject to such section shall—

(A) pay its employees not less than the minimum wage in effect under such section on March 31, 1990;

(B) pay its employees in accordance with section 7 of such Act (29 U.S.C. 207); and

(C) remain subject to section 12 of such Act (29 U.S.C. 212).

(2) VIOLATIONS.—A violation of paragraph (1) shall be considered a violation of section 6, 7, or 12 of the Fair Labor Standards Act of 1938, as the case may be.

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective on April 1, 1990.

TRAINING WAGE

SEC. 6. TRAINING WAGE.

(a) IN GENERAL.—

(1) AUTHORITY.—Any employer may, in lieu of the minimum wage prescribed by section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206), pay an eligible employee the wage prescribed by paragraph (2)

(A) while such employee is employed for the period authorized by subsection (g)(1)(B)(iii), or

(B) while such employee is engaged in on-the-job training for the period authorized by subsection (g)(1)(B)(ii).

(2) WAGE RATE.—The wage referred to in paragraph (1) shall be a wage—

(A) of not less than $3.35 an hour during the year beginning April 1, 1990; and

(B) beginning April 1, 1991, of not less than $3.35 an hour or 85 percent of the wage prescribed by section 6 of such Act, whichever is greater.

(b) WAGE PERIOD.—An employer may pay an eligible employee the wage authorized by subsection (a) for a period that—

(1) begins on or after April 1, 1990;

(2) does not exceed the maximum period during which an employee may be paid such wage as determined under subsection (g)(1)(B); and

(3) ends before April 1, 1993.

(c) WAGE CONDITIONS.—No eligible employee may be paid the wage authorized by subsection (a) by an employer if—

(1) any other individual has been laid off by such employer from the position to be filled by such eligible employee or from any substantially equivalent position; or

(2) such employer has terminated the employment of any regular employee or otherwise reduced the number of employees with the intention of filling the vacancy so created by hiring an employee to be paid such wage.

(d) LIMITATIONS.—

(1) EMPLOYEE HOURS.—During any month in which employees are to be employed in an establishment under this section, the proportion of employee hours of employment to the total hours of employment of all employees in such establishment may not exceed a proportion equal to one-fourth of the total hours of employment of all employees in such establishment.

(2) DISPLACEMENT.—

(A) PROHIBITION.—No employer may take any action to displace employees (including partial
displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in subsection (a).

(B) DISQUALIFICATION.—If the Secretary determines that an employer has taken an action in violation of subparagraph (A), the Secretary shall issue an order disqualifying such employer from employing any individual at such wage.

(e) NOTICE.—Each employer shall provide to any eligible employee who is to be paid the wage authorized by subsection (a) a written notice before the employee begins employment stating the requirements of this section and the remedies provided by subsection (f) for violations of this section. The Secretary shall provide to employers the text of the notice to be provided under this subsection.

(f) ENFORCEMENT.—Any employer who violates this section shall be considered to have violated section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)). Sections 16 and 17 of such Act (29 U.S.C. 216 and 217) shall apply with respect to the violation.

(g) DEFINITIONS.—For purposes of this section:

(1) ELIGIBLE EMPLOYEE.—

(A) IN GENERAL.—The term "eligible employee" means with respect to an employer an individual who—

(i) is not a migrant agricultural worker or a seasonal agricultural worker (as defined in paragraphs (B) and (10) of section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802 (8) and (10)) without regard to subparagraph (B) of such paragraphs and is not a nonimmigrant described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a));

(ii) has not attained the age of 20 years; and

(iii) is eligible to be paid the wage authorized by subsection (a) as determined under subparagraph (B).

(B) DURATION.—

(i) An employee shall initially be eligible to be paid the wage authorized by subsection (a) until the employee has been employed a cumulative total of 90 days at such wage.

(ii) An employee who has been employed by an employer at the wage authorized by subsection (a) for the period authorized by clause (i) may be employed by any other employer for an additional 90 days if the employer meets the requirements of subsection (h).

(iii) The total period, as authorized by clauses (i) and (ii), that an employee may be paid the wage authorized by subsection (a) may not exceed 180 days.

(iv) For purposes of this subparagraph, the term "employer" means with respect to an employee an employer who is required to withhold payroll taxes for such employee.

(C) PROOF.—

(i) IN GENERAL.—An individual is responsible for providing the requisite proof of previous period or periods of employment with other employers. An employer's good faith reliance on the proof presented to the employer by an individual shall constitute a complete defense to a charge that the employer has violated subsection (b)(2) with respect to such individual.

(ii) REGULATIONS.—The Secretary of Labor shall issue regulations defining the requisite proof required of an individual. Such regulations shall establish minimal requirements for requisite proof and may prescribe that an accurate list of the individual's employers and a statement of the dates and duration of employment with each employer constitute requisite proof.

(2) ON-THE-JOB TRAINING.—The term "on-the-job training" means training that is offered to an individual while employed in productive work that provides training, technical and other related skills, and personal skills that are essential to the full and adequate performance of such employment.

(h) EMPLOYER REQUIREMENTS.—An employer who wants to employ employees at the wage authorized by subsection (a) for the period authorized by subsection (g)(1)(B)(ii) shall—

(1) notify the Secretary annually of the positions at which such employees are to be employed at such wage,

(2) provide on-the-job training to such employees which meets general criteria of the Secretary issued by regulation after consultation with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives and other interested persons,

(3) keep on file a copy of the training program which the employer will provide such employees,

(4) provide a copy of the training program to the employees,
(5) post in a conspicuous place in places of employment a notice of the types of jobs for which the employer is providing on-the-job training, and
(6) send to the Secretary on an annual basis a copy of such notice.
The Secretary shall make available to the public upon request notices provided to the Secretary by employers in accordance with paragraph (6).

(i) REPORT.—The Secretary of Labor shall report to Congress not later than March 1, 1993, on the effectiveness of the wage authorized by subsection (a). The report shall include—
(1) an analysis of the impact of such wage on employment opportunities for inexperienced workers;
(2) any reduction in employment opportunities for experienced workers resulting from the employment of employees under such wage;
(3) the nature and duration of the training provided under such wage; and
(4) the degree to which employers used the authority to pay such wage.

APPLICATION OF FLSA TO CONGRESSIONAL AND ARCHITECT OF THE CAPITOL EMPLOYEES

SEC. 8. APPLICATION OF RIGHTS AND PROTECTIONS OF FAIR LABOR STANDARDS ACT OF 1938 TO CONGRESSIONAL AND ARCHITECT OF THE CAPITOL EMPLOYEES.

(a) HOUSE EMPLOYEES.—
(1) IN GENERAL.—Not later than 180 days after the date the minimum wage rate prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is increased pursuant to the amendment made by section 2, the rights and protections under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) shall apply with respect to any employee in an employment position in the House of Representatives and to any employing authority of the House of Representatives.

(2) ADMINISTRATION.—In the administration of this subsection, the remedies and procedures under the Fair Employment Practices Resolution shall be applied. As used in this paragraph, the term "Fair Employment Practices Resolution" means House Resolution 558, One Hundredth Congress, agreed to October 4, 1988, as continued in effect by House Resolution 15, One Hundred First Congress, agreed to January 3, 1989.

(b) ARCHITECT OF THE CAPITOL EMPLOYEES.—
Not later than 180 days after the date the minimum wage rate prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is increased pursuant to the amendment made by section 2, the rights and protections under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) shall apply with respect to individuals employed under the Office of the Architect of the Capitol.

APPROVED NOVEMBER 17, 1989
ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1985

(Public Law 99-150)

[99TH CONGRESS] [FIRST SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938 to provide rules for overtime compensatory time off for certain public agency employees, to clarify the application of that Act to volunteers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1985."

Sections 2(a), 3, 4(a) and 5 of the Fair Labor Standards Amendments of 1985 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.

COMPENSATORY TIME

SEC. 2. * * *

(b) EXISTING COLLECTIVE BARGAINING AGREEMENTS — A collective bargaining agreement which is in effect on April 15, 1986, and which permits compensatory time off in lieu of overtime compensation shall remain in effect until its expiration date unless otherwise modified, except that compensatory time shall be provided after April 14, 1986, in accordance with section 7(c) of the Fair Labor Standards Act of 1938 (as added by subsection (a)).

(c) LIABILITY AND DEFERRED PAYMENT — (1) No State, political subdivision of a State, or interstate governmental agency shall be liable under section 16 of the Fair Labor Standards Act of 1938 for a violation of section 6 (in the case of a territory or possession of the United States), 7, or 11(c) (as it relates to section 7) of such Act occurring before April 15, 1986, with respect to any employee of the State, political subdivision, or agency who would not have been covered by such Act under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in sections 775.2 and 775.4 of title 29 of the Code of Federal Regulations.

(2) A State, political subdivision of a State, or interstate governmental agency may defer until August 1, 1986, the payment of monetary overtime compensa-


VOLUNTEERS

SEC. 3. (b) REGULATIONS.—Not later than March 15, 1986, the Secretary of Labor shall issue regulations to carry out paragraph (4) of section 3(e) (as amended by subsection (a) of this section).

(c) CURRENT PRACTICE.—If, before April 15, 1986, the practice of a public agency was to treat certain individuals as volunteers, such individuals shall until April 15, 1986, be considered, for purposes of the Fair Labor Standards Act of 1938, as volunteers and not as employees. No public agency which is a State, a political subdivision of a State, or an interstate governmental agency shall be liable for a violation of section 6 occurring before April 15, 1986, with respect to services deemed by that agency to have been performed for it by an individual on a voluntary basis.

EFFECTIVE DATE

SEC. 6. The amendments made by this Act shall take effect April 15, 1986. The Secretary of Labor shall before such date promulgate such regulations as may be required to implement such amendments.

EFFECT OF AMENDMENTS

SEC. 7. The amendments made by this Act shall not affect whether a public agency which is a State, political subdivision of a State, or an interstate governmental agency is liable under section 16 of the Fair Labor Standards Act of 1938 for a violation of section 5, 7, or 11 of such Act occurring before April 15, 1986, with respect to any employee of such public agency who would have been covered by such Act under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in sections 775.2 and 775.4 of title 29 of the Code of Federal Regulations.

DISCRIMINATION

SEC. 8. A public agency which is a State, political subdivision of a State, or an interstate governmental agency and which discriminates or has discriminated against an employee with respect to the employee's
wages or other terms or conditions of employment because on or after February 19, 1985, the employee asserted coverage under section 7 of the Fair Labor Standards Act of 1938 shall be held to have violated section 15(a)(3) of such Act. The protection against discrimination afforded by the preceding sentence shall be available after August 1, 1986, only for an employee who takes an action described in section 15(a)(3) of such Act.

Approved November 13, 1985
ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1977
(91 Stat. 1246)

[Public Law 95-151]
[95th Congress] [First Session]

AN ACT

To amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1977".

[Sections 2(a) through 2(d) and sections 3 through 14, inclusive, of the Fair Labor Standards Amendments of 1977 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

Increase in Minimum Wage

Sec. 2. * * *

(a)(1) There is established the Minimum Wage Study Commission (hereinafter in this subsection referred to as the "Commission") which shall conduct a study of the Fair Labor Standards Act of 1938 and the social, political, and economic ramifications of the minimum wage, overtime, and other requirements of that Act. Such study shall include but not be limited to—

(A) the beneficial effects of the minimum wage, including its effect in ameliorating poverty among working citizens;

(B) the inflationary impact (if any) of increases in the minimum wage prescribed by that Act;

(C) the effect (if any) such increases have on wages paid employees at a rate in excess of the rate prescribed by that Act;

(D) the economic consequence (if any) of authorizing an automatic increase in the rate prescribed in that Act on the basis of an increase in a wage, price, or other index;

(E) the employment and unemployment effects (if any) of providing a different minimum wage for youth, and the employment and unemployment effects (if any) on handicapped and aged individuals of an increase in such rate and of providing a different minimum wage rate for such individuals;

(F) the effect (if any) of the full-time student certification program on employment and unemployment;

(G) the employment and unemployment effects (if any) of the minimum wage;

(H) the exemptions from the minimum wage and overtime requirements of that Act;

(I) the relationship (if any) between the Federal minimum wage rates and public assistance programs, including the extent to which employees at such rates are also eligible to receive food stamps and other public assistance;

(J) the overall level of noncompliance with that Act; and

(K) the demographic profile of minimum wage workers.

(2) The Commission shall conduct a study concerning the extent to which the exemptions from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938 may apply to employees of conglomerates, and shall make a report, within one year after the date of the appointment of the members of the Commission, of the results of such study. For the purposes of this paragraph a "conglomerate" means an establishment (A) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to the activities of the establishment employing such employees and (B) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $100,000,000 (exclusive of excise taxes at the retail level which are separately stated). The report shall include an analysis of the effects of eliminating the exemptions from the minimum wage and overtime requirements of such Act that may currently apply to the employees of such conglomerates.

(3) The Commission shall make a report of the results of the study conducted pursuant to paragraph (1) thirty-six months after the date of the appointment of the members of the Commission. The report shall include such recommendations for legislation as the Commission determines are appropriate. The Commission may make interim or additional reports which it determines are appropriate. Each report shall be made to the President and to the Congress. The Commission shall cease to exist thirty days after the submission of the report required by this paragraph.

(4)(A) The Commission shall consist of eight members as follows:

(i) Two members appointed by the Secretary of Labor.
(ii) Two members appointed by the Secretary of Commerce.

(iii) Two members appointed by the Secretary of Agriculture.

(iv) Two members appointed by the Secretary of Health, Education, and Welfare.

The appointments authorized under this paragraph shall be made within 180 days after the date of enactment of this subsection.

(B) The Chairperson shall be selected by the members of the Commission. Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(C)(i) Except as provided in clause (ii), members of the Commission who are officers or employees of the Federal Government shall serve without compensation. Other members, while engaged in the activities of the Commission, shall be paid at a rate equal to the per diem equivalent of the annual rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code.

(ii) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(D) The Commission may prescribe such rules as may be necessary to carry out its duties under this subsection.

(B) The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it deems advisable.

(C) Upon request of the Commission, the head of any Federal department or agency is authorized to detail, on a reimbursable basis, any of the personnel of such department or agency to the Commission to assist it in carrying out its duties under this subsection.

(D) The Department of Labor shall furnish such professional, technical, and research assistance as required by the Commission.

(E) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request to carry out its duties under this subsection.

(F) The Commission may secure directly from any department or agency of the United States such information as the Commission may require to carry out its duties under this subsection. Upon request of the Commission, the head of any such department or agency shall furnish such information to the Commission.

(G) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(H) The Chairperson may appoint an executive director of the Commission who shall perform such duties as the Chairperson may prescribe.

(B) With approval of the Chairperson, the executive director may appoint and fix the pay of such clerical personnel as are necessary for the Commission to carry out its duties.

(C) The executive director and staff shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates but at rates not in excess of the annual rate payable for grade GS-18 of the General Schedule under section 5332 of such title.

(D) The executive director, with the concurrence of the Chairperson, may obtain temporary and intermittent services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

Effective Date

Sec. 15. (a) Except as provided in sections 3, 14, and subsection (p) of this section, the amendments made by this Act shall take effect January 1, 1978.

(b) The amendments made by sections 8, 9, 11, 12, and 13 shall take effect on the date of the enactment of this Act.

(c) On and after the date of the enactment of this Act, the Secretary of Labor shall take such administrative action as may be necessary for the implementation of the amendments made by this Act.

Approved November 1, 1977.
ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1974

(PUBLIC LAW 93-259)
[93RD CONGRESS] [2ND SESSION]
AN ACT

To amend the Fair Labor Standards Act of 1938 to increase the minimum wage rate under that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1974".

(Sections 2 through 8(d)(1) and sections 7 through 27, inclusive, of the Fair Labor Standards Amendments of 1974 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act. Section 8(d)(2)(A) and (B) amends the Portal-to-Portal Act of 1947 and is set forth below.)

Federal and State Employees

SEC. 6. ** *

(2)(A) Section 6 of the Portal-to-Portal Pay Act of 1947 is amended by striking out the period at the end of paragraph (c) and by inserting in lieu thereof a semicolon and by adding after such paragraph the following:

"(d) with respect to any cause of action brought under section 16(b) of the Fair Labor Standards Act of 1938 against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspensions shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction."

(B) Section 11 of such Act is amended by striking out "(b)" after "section 16"

Effective Date

SEC. 29. (a) Except as otherwise specifically provided, the amendments made by this Act shall take effect on May 1, 1974.

(b) Notwithstanding subsection (a), on and after the date of the enactment of this Act the Secretary of Labor is authorized to prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act.

Approved April 8, 1974.
ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1966
(80 Stat. 830)

[PUBLIC LAW 89-601]
[89TH CONGRESS] [2ND SESSION]

AN ACT

To amend the Fair Labor Standards Act of 1938 to extend its protection to additional employees, to raise the minimum wage, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1966".

[Sections 101 to 501, inclusive, and section 601 (a) of the Fair Labor Standards Amendments of 1966 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

STATUTE OF LIMITATIONS

SEC. 601. * * *
(b) Section 6(a) of the Portal-to-Portal Act of 1947 (Public Law 49, Eightieth Congress) is amended by inserting before the semicolon at the end thereof the following: "", except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued".

EFFECTIVE DATE

SEC. 602. Except as otherwise provided in this Act, the amendments made by this Act shall take effect on February 1, 1967. On and after the date of the enactment of this Act the Secretary is authorized to promulgate necessary rules, regulations, or orders with regard to the amendments made by this Act.

STUDY OF EXCESSIVE OVERTIME

SEC. 603. The Secretary of Labor is hereby instructed to commence immediately a complete study of present practices dealing with overtime payments for work in excess of forty hours per week and the extent to which such overtime work impedes the creation of new job opportunities in American industry. The Secretary is further instructed to report to the Congress by July 1, 1967, the findings of such survey with appropriate recommendations.

CANAL ZONE EMPLOYEES AND PANAMA CANAL STUDY

SEC. 604. The Secretary of Labor, in cooperation with the Secretary of Defense and the Secretary of State, shall (1) undertake a study with respect to (A) wage rates payable to Federal employees in the Canal Zone engaged in employment of the kind described in paragraph (7) of section 202 of the Classification Act of 1949 (5 U.S.C. 1089(7)) and (B) the requirements of an effective and economical operation of the Panama Canal, and (2) report to the Congress not later than July 1, 1968, the results of his study together with such recommendations as he may deem appropriate.

STUDY OF WAGES PAID HANDICAPPED CLIENTS IN SHELTERED WORKSHOPS

SEC. 605. The Secretary of Labor is hereby instructed to commence immediately a complete study of wage payments to handicapped clients of sheltered workshops and of the feasibility of raising existing wage standards in such workshops. The Secretary is further instructed to report to the Congress by July 1, 1967, the findings of such study with appropriate recommendations.

PREVENTION OF DISCRIMINATION BECAUSE OF AGE

SEC. 606. The Secretary of Labor is hereby directed to submit to the Congress not later than January 1, 1967, his specific legislative recommendations for implementing the conclusions and recommendations contained in his report on age discrimination in employment made pursuant to section 715 of Public Law 88-352. Such legislative recommendations shall include, without limitation, provisions specifying appropriate enforcement procedures, a particular administering agency, and the standards, coverage, and exemptions, if any, to be included in the proposed enactment.

Approved September 23, 1966.
ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1961
(75 Stat. 45)

[Public Law 87-30]

[87th Congress] [1st Session]

AN ACT

To amend the Fair Labor Standards Act of 1938, as amended, to provide coverage for employees of large enterprises engaged in retail trade or service and of other employers engaged in commerce or in the production of goods for commerce, to increase the minimum wage under the Act to $1.25 an hour, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Fair Labor Standards Amendments of 1961”.

[Sections 2 to 12, inclusive, of the Fair Labor Standards Amendments of 1961 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

EFFECTIVE DATE

Sec. 14. The amendments made by this Act shall take effect upon the expiration of one hundred and twenty days after the date of its enactment, except as otherwise provided in such amendments and except that the authority to promulgate necessary rules, regulations, or orders with regard to amendments made by this Act, under the Fair Labor Standards Act of 1938 and amendments thereto, including amendments made by this Act, may be exercised by the Secretary on and after the date of enactment of this Act.

Approved May 5, 1961.
ADDITIONAL PROVISIONS OF FAIR LABOR STANDARDS AMENDMENTS OF 1949

(PUBLIC LAW 398—81ST CONGRESS)

(CHAPTER 736—1ST SESSION)

AN ACT

To provide for the amendment of the Fair Labor Standards Act of 1938, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Amendments of 1949".

[Sections 2 to 15, inclusive, of the Fair Labor Standards Amendments of 1949 amend the Fair Labor Standards Act of 1938, and are incorporated in their proper place in the Act.]

MISCELLANEOUS AND EFFECTIVE DATE

SEC. 16. (a) The amendments made by this Act shall take effect upon the expiration of ninety days from the date of its enactment; except that the amendment made by section 4 shall take effect on the date of its enactment.

(b) Except as provided in section 6(a) and in the last sentence of section 16(c) of the Fair Labor Standards Act of 1938, as amended, no amendment made by this Act shall be construed as amending, modifying, or repealing any provision of the Portal-to-Portal Act of 1947.

(c) Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor, and any agreement entered into by the Administrator or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended, on the effective date of this Act, shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or the Secretary, as the case may be, pursuant to this Act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with the provisions of this Act, or may from time to time be amended, modified, or rescinded by the Administrator or the Secretary, as the case may be, in accordance with the provisions of this Act.1

(d) No amendment made by this Act shall affect any penalty or liability with respect to any act or omission occurring prior to the effective date of this Act; but, after the expiration of two years from such effective date, no action shall be instituted under section 16(b) of the Fair Labor Standards Act of 1938, as amended, with respect to any liability accruing thereunder for any act or omission occurring prior to the effective date of this Act.

(e) No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended (in any action or proceeding commenced prior to or on or after the effective date of this Act), on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to July 20, 1949, if the compensation paid prior to July 20, 1949 for such work was at least equal to the compensation which would have been payable for such work had section 7(d) (6) and (7) and section 7(g) of the Fair Labor Standards Act of 1938, as amended, been in effect at the time of such payment.

(f) Public Law 177, Eighty-first Congress, approved July 20, 1949, is hereby repealed as of the effective date of this Act.2

Approved, October 26, 1949.

1 Effective May 24, 1940, all functions of Administrator were transferred to the Secretary of Labor by Reorganization Plan No. 4 of 1940, 46 Stat. 1289. See text set out under section 6(a) of the Fair Labor Standards Act.

2 The provisions of the repealed statute are now contained in substance in sections 7(d)(6), (7), and (g) of the Fair Labor Standards Act, as amended.
PERTINENT PROVISIONS AFFECTING THE FAIR LABOR STANDARDS ACT FROM
THE PORTAL-TO-PORTAL ACT OF 1947

(PUBLIC LAW 49—80TH CONGRESS)

[CHAPTER 52—1ST SESSION]
[H.R. 2167]

AN ACT

To relieve employers from certain liabilities and punishments under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PART I

FINDINGS AND POLICY

SECTION 1. (a) The Congress hereby finds that the Fair Labor Standards Act of 1938, as amended, has been interpreted judicially in disregard of long-established customs, practices, and contracts between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers with the results that, if said Act as so interpreted or claims arising under such interpretations were permitted to stand, (1) the payment of such liabilities would bring about financial ruin of many employers and seriously impair the capital resources of many others, thereby resulting in the reduction of industrial operations, halting of expansion and development, curtailing employment, and the earning power of employees; (2) the credit of many employers would be seriously impaired; (3) there would be created both an extended and continuous uncertainty on the part of industry, both employer and employee, as to the financial condition of productive establishments and a gross inequality of competitive conditions between employers and between industries; (4) employees would receive windfall payments, including liquidated damages, of sums for activities performed by them without any expectation of reward beyond that included in their agreed rates of pay; (5) there would occur the promotion of increasing demands for payment to employees for engaging in activities no compensation for which had been contemplatio
PART III
FUTURE CLAIMS


(a) Except as provided in subsection (b), no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any of the following activities of such employee engaged in or after the date of the enactment of this Act—

(1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and

(2) activities which are preliminary to or postliminary to said principal activity or activities, which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities.

(b) Notwithstanding the provisions of subsection (a) which relieve an employer from liability and punishment with respect to an activity, the employer shall not be so relieved if such activity is compensable by either—

(1) an express provision of a written or nonwritten contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

(c) For the purposes of subsection (b), an activity shall be considered as compensable under such contract provision or such custom or practice only when it is engaged in during the portion of the day with respect to which it is so made compensable.

(d) In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended, of the Walsh-Healey Act, or of the Bacon-Davis Act, in determining the time for which an employer employs an employee with respect to walking, riding, traveling or other preliminary or postliminary activities described in subsection (a) of this section, there shall be counted all that time, but only that time, during which the employee engages in any such activity which is compensable within the meaning of subsections (b) and (c) of this section.

PART IV
MISCELLANEOUS

SEC. 6. STATUTE OF LIMITATIONS.—Any action commences on or after the date of the enactment of this Act to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act—

(a) if the cause of action accrues on or after the date of the enactment of this Act—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;  

(d) with respect to any cause of action brought under section 16(b) of the Fair Labor Standards Act of 1938 against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.

SEC. 7. DETERMINATION OF COMMENCEMENT OF FUTURE ACTIONS.—In determining when an action is commenced for the purposes of section 6, an action commenced on or after the date of the enactment of this Act.

under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective or class action instituted under the Fair Labor Standards Act of 1938, as amended, or the Bacon-Davis Act, it shall be considered to be commenced in the case of any individual claimant—

(a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or

(b) if such written consent was not so filed or if his name did not so appear—on the subsequent date on which such written consent is filed in the court in which the action was commenced.

* * * * *

SEC. 10. RELIANCE IN FUTURE ON ADMINISTRATIVE RULINGS, ETC.—

(a) In any action or proceeding based on any act or omission on or after the date of the enactment of this Act, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, of the agency of the United States specified in subsection (b) of this section, or any administrative practice or enforcement policy of such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

(b) The agency referred to in subsection (a) shall be—

(1) in the case of the Fair Labor Standards Act of 1938, as amended—the Administrator of the Wage and Hour Division of the Department of Labor;

* * * * *

SEC. 11. LIQUIDATED DAMAGES.—In any action commenced prior to or on or after the date of the enactment of this Act to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 16 of such Act.

* * * * *

SEC. 13. DEFINITIONS.—

(a) When the terms "employer", "employee", and "wage" are used in this Act in relation to the Fair Labor Standards Act of 1938, as amended, they shall have the same meaning as when used in such Act of 1938.

* * * * *

(e) As used in section 6 the term "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

SEC. 14 SEPARABILITY.—If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 15. SHORT TITLE.—This Act may be cited as the "Portal-to-Portal Act of 1947".

Approved May 14, 1947.

* The Fair Labor Standards Amendments of 1974 struck "(b)" after "section 16".
ADDITIONAL PROVISIONS OF EQUAL PAY ACT OF 1963
(77 Stat. 56)

[Public Law 88-38]
[88TH CONGRESS, S. 1409]
[June 10, 1963]
AN ACT

To prohibit discrimination on account of sex in the payment of wages by employers engaged in commerce or in the production of goods for commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Pay Act of 1963".

DECLARATION OF PURPOSE

SEC. 2. (a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex—
(1) depresses wages and living standards for employees necessary for their health and efficiency;
(2) prevents the maximum utilization of the available labor resources;
(3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;
(4) burdens commerce and the free flow of goods in commerce; and

(5) constitutes an unfair method of competition.

(b) It is hereby declared to be the policy of this Act, through exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct the conditions above referred to in such industries.

[Section 3 of the Equal Pay Act of 1963 amends section 6 of the Fair Labor Standards Act by adding a new subsection (d). The amendment is incorporated in the revised text of the Act.]

EFFECTIVE DATE

SEC. 4. The amendments made by this Act shall take effect upon the expiration of one year from the date of its enactment: Provided, That in the case of employees covered by a bona fide collective bargaining agreement in effect at least thirty days prior to the date of enactment of this Act, entered into by a labor organization (as defined in section 6(D)(4) of the Fair Labor Standards Act of 1938, as amended), the amendments made by this Act shall take effect upon the termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act, whichever shall first occur. Approved June 10, 1963, 12 m.