

TITLE 29 - LABOR**CHAPTER 8 - FAIR LABOR STANDARDS****§ 216. Penalties****(a) Fines and imprisonment**

Any person who willfully violates any of the provisions of section 215 of this title 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) Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of section 206 or section 207 of this title 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 215 (a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215 (a)(3) of this title, 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 217 of this title 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 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection or
- (2) legal or equitable relief is sought as a result of alleged violations of section 215 (a)(3) of this title.

(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207 of this title, 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 unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section 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 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion

of the Secretary. Any sums thus recovered by the Secretary of Labor 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 of Labor, 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 of Labor under this subsection for the purposes of the statutes of limitations provided in section 255 (a) of this title, 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.

(d) Savings provisions

In any action or proceeding commenced prior to, on, or after August 8, 1956, no employer shall be subject to any liability or punishment under this chapter or the Portal-to-Portal Act of 1947 [29 U.S.C. 251 et seq.] on account of his failure to comply with any provision or provisions of this chapter or such Act

- (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 213 (f) of this title 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 206 (a)(3)¹ of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e) Civil penalties for child labor violations

- (1)
 - (A) Any person who violates the provisions of sections² 212 or 213(c) of this title, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed—
 - (i) \$11,000 for each employee who was the subject of such a violation; or
 - (ii) \$50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.
 - (B) For purposes of subparagraph (A), the term “serious injury” means—
 - (i) permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);
 - (ii) permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or
 - (iii) permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.
- (2) Any person who repeatedly or willfully violates section 206 or 207 of this title, relating to wages, shall be subject to a civil penalty not to exceed \$1,100 for each such violation.
- (3) 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—
 - (A) deducted from any sums owing by the United States to the person charged;
 - (B) 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; or
 - (C) ordered by the court, in an action brought for a violation of section 215 (a)(4) of this title or a repeated or willful violation of section 215 (a)(2) of this title, to be paid to the Secretary.

(4) Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within 15 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 and regulations to be promulgated by the Secretary.

(5) Except for civil penalties collected for violations of section 212 of this title, 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 9a of this title. Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury.

Footnotes

¹ See References in Text note below.

² So in original. Probably should be “section”.

(June 25, 1938, ch. 676, § 16, 52 Stat. 1069; May 14, 1947, ch. 52, § 5(a), 61 Stat. 87; Oct. 26, 1949, ch. 736, § 14, 63 Stat. 919; 1950 Reorg. Plan No. 6, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263; Aug. 8, 1956, ch. 1035, § 4, 70 Stat. 1118; Pub. L. 85–231, § 1(2), Aug. 30, 1957, 71 Stat. 514; Pub. L. 87–30, § 12(a), May 5, 1961, 75 Stat. 74; Pub. L. 89–601, title VI, § 601(a), Sept. 23, 1966, 80 Stat. 844; Pub. L. 93–259, §§ 6(d)(1), 25(c), 26, Apr. 8, 1974, 88 Stat. 61, 72, 73; Pub. L. 95–151, § 10, Nov. 1, 1977, 91 Stat. 1252; Pub. L. 101–157, § 9, Nov. 17, 1989, 103 Stat. 945; Pub. L. 101–508, title III, § 3103, Nov. 5, 1990, 104 Stat. 1388–29; Pub. L. 104–174, § 2, Aug. 6, 1996, 110 Stat. 1554; Pub. L. 110–233, title III, § 302(a), May 21, 2008, 122 Stat. 920.)

References in Text

The Portal-to-Portal Act of 1947, referred to in subsec. (d), is act May 14, 1947, ch. 52, 61 Stat. 84, as amended, which is classified principally to chapter 9 (§ 251 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 251 of this title and Tables.

The effective date of this amendment of subsection (d), referred to in subsec. (d), occurred upon the expiration of 90 days after Aug. 30, 1957. See section 2 of Pub. L. 85–231, set out as an Effective Date of 1957 Amendment note under section 213 of this title.

Section 206 (a)(3) of this title, referred to in subsec. (d)(3), was repealed and section 206 (a)(4) of this title was redesignated section 206 (a)(3) by Pub. L. 110–28, title VIII, § 8103(c)(1)(B), May 25, 2007, 121 Stat. 189.

Amendments

2008—Subsec. (e). Pub. L. 110–233 amended subsec. (e) generally. Prior to amendment, subsec. (e) related to civil penalties for child labor violations.

1996—Subsec. (e). Pub. L. 104–174 in first sentence substituted “of section 212 of this title or section 213 (c)(5) of this title” for “of section 212 of this title” and “under section 212 of this title or section 213 (c)(5) of this title” for “under that section”.

1990—Subsec. (e). Pub. L. 101–508 struck out “or any person who repeatedly or willfully violates section 206 or 207 of this title” after “issued under that section,” in first sentence, substituted “not to exceed \$10,000 for each employee who was the subject of such a violation” for “not to exceed \$1,000 for each such violation” in first sentence, inserted after first sentence “Any person who repeatedly or willfully violates section 206 or 207 of this title shall be subject to a civil penalty of not to exceed \$1,000 for each such violation.”, substituted “any penalty under this subsection” for “such penalty” wherever appearing except after “appropriateness of”, substituted “Except for civil penalties collected for violations of section 212 of this title, sums” for “Sums” in last sentence, and inserted at end “Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury.”

1989—Subsec. (e). Pub. L. 101–157 inserted “or any person who repeatedly or willfully violates section 206 or 207 of this title” in introductory provisions and inserted “or a repeated or willful violation of section 215 (a)(2) of this title” in par. (3).

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

1977—Subsec. (b). Pub. L. 95–151, § 10(a), (b), inserted provisions relating to violations of section 215 (a)(3) of this title by employers, “(1)” after “section 217 of this title in which”, and cl. (2), and substituted “An action to recover the liability prescribed in either of the preceding sentences” for “Action to recover such liability”.

Subsec. (c). Pub. L. 95–151, § 10(c), inserted “to recover the liability specified in the first sentence of such subsection” after “an action by or on behalf of any employee”.

1974—Subsec. (b). Pub. L. 93–259, § 6(d)(1), substituted in second sentence “maintained against any employer (including a public agency) in any Federal or State court” for “maintained in any court”.

Subsec. (c). Pub. L. 93–259, § 26, in revising first three sentences, reenacted first sentence, substituting “Secretary” for “Secretary of Labor”; included in second sentence provision for an action by the Secretary for liquidated damages and deleted requirement of a written request by an employee claiming unpaid minimum wages or unpaid overtime compensation with the Secretary of Labor prior to an action by the Secretary and proviso prohibiting any action in any case involving an issue of law not settled finally by the courts and depriving courts of jurisdiction of any action or proceeding involving the issue of law not settled finally; and substituted third sentence “The right provided by subsection (b) of this section to bring by or on behalf of any employee and of any employees 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 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary.” for “The consent of any employee to the bringing of any such action by the Secretary of Labor, unless such action is dismissed without prejudice on motion of the Secretary of Labor, shall constitute a waiver by such employee of any right of action he may have under subsection (b) of this section for such unpaid wages or unpaid overtime compensation and an additional equal amount as liquidated damages.”

Subsec. (e). Pub. L. 93–259, § 25(c), added subsec. (e).

1966—Subsec. (c). Pub. L. 89–601 substituted “statutes of limitations” for “two-year statute of limitations”.

1961—Subsec. (b). Pub. L. 87–30 provided for termination of right of action upon commencement of injunction proceedings by the Secretary of Labor.

1957—Subsec. (d). Pub. L. 85–231 added cls. (1) and (2) and designated existing provisions as cl. (3).

1956—Subsec. (d). Act Aug. 8, 1956, added subsec. (d).

1949—Subsec. (c). Act Oct. 26, 1949, added subsec. (c).

1947—Subsec. (b). Act May 14, 1947, struck out provisions relating to the designation by employee or employees of an agent or representative to maintain an action under this section for and on behalf of all employees similarly situated and inserted provisions relating to the requirement that no employee shall be a party plaintiff unless he gives his consent in writing and such consent is filed with the court.

Effective Date of 2008 Amendment

Pub. L. 110–233, title III, § 302(b), May 21, 2008, 122 Stat. 922, provided that: “The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [May 21, 2008].”

Effective Date of 1977 Amendment

Amendment by Pub. L. 95–151 effective Jan. 1, 1978, see section 15(a) of Pub. L. 95–151, set out as a note under section 203 of this title.

Effective Date of 1974 Amendment

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Effective Date of 1966 Amendment

Amendment by Pub. L. 89–601 effective Feb. 1, 1967, except as otherwise provided, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

Effective Date of 1961 Amendment

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under section 203 of this title.

Effective Date of 1957 Amendment

Amendment by Pub. L. 85–231 effective upon expiration of ninety days from Aug. 30, 1957, see section 2 of Pub. L. 85–231, set out as a note under section 213 of this title.

Effective Date of 1949 Amendment

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

Effective Date of 1947 Amendment

Section 5(b) of act May 14, 1947, provided that: “The amendment made by subsection (a) of this section [amending this section] shall be applicable only with respect to actions commenced under the Fair Labor Standards Act of 1938, as amended [this chapter], on or after the date of the enactment of this Act [May 14, 1947].”

Transfer of Functions

Functions relating to enforcement and administration of equal pay provisions vested by subsecs. (b) and (c) of this section in Secretary of Labor transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 1, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

Liability of State, Political Subdivision, or Interstate Governmental Agency for Violations Before April 15, 1986, Respecting any Employee Not Covered Under Special Enforcement Policy

Pub. L. 99–150, § 2(c)(1), Nov. 13, 1985, 99 Stat. 788, provided that: “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 [29 U.S.C. 216] for a violation of section 6 [29 U.S.C. 206] (in the case of a territory or possession of the United States), 7 [29 U.S.C. 207], or 11(c) [29 U.S.C. 211 (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 [this chapter] 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.”

Effect of Amendments by Public Law 99–150 on Public Agency Liability Respecting any Employee Covered Under Special Enforcement Policy

Pub. L. 99–150, § 7, Nov. 13, 1985, 99 Stat. 791, provided that: “The amendments made by this Act [see Short Title of 1985 Amendment note set out under section 201 of this title] 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 [29 U.S.C. 216] for a violation of section 6, 7, or 11 of such Act [29 U.S.C. 206, 207, 211] occurring before April 15, 1986, with respect to any employee of such public agency who would have been covered by such Act [this chapter] under the Secretary of Labor’s special enforcement policy on January 1, 1985, and published in section 775.3 of title 29 of the Code of Federal Regulations.”

Rules, Regulations, and Orders Promulgated With Regard to 1966 Amendments

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89–601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89–601, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

Construction of 1949 Amendments With Portal-to-Portal Act of 1947

Section 16(b) of act Oct. 26, 1949, provided that: “Except as provided in section 3 (o) [section 203 (o) of this title] and in the last sentence of section 16(c) of the Fair Labor Standards Act of 1938, as amended [section 216 (e) of this title], no amendment made by this Act [amending sections 202, 208, 211 to 217 of this title] shall be construed as amending, modifying, or repealing any provisions of the Portal-to-Portal Act of 1947.”

Retroactive Effect of 1949 Amendments; Limitation of Actions

Section 16(d) of act Oct. 26, 1949, provided that actions based upon acts or omissions occurring prior to the effective date of act Oct. 26, 1949, which was to be effective ninety days after Oct. 26, 1949, were not prevented by the

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amendments made to sections 202 to 208, and 211 to 217 of this title by such act, so long as such actions were instituted within two years from such effective date.