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§ 251. Congressional findings and declaration of policy

(a) The Congress finds that the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], 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 contemplated by either the employer or employee at the time they were engaged in;

(6) voluntary collective bargaining would be interfered with and industrial disputes between employees and employers and between employees and employees would be created;

(7) the courts of the country would be burdened with excessive and needless litigation and champertous practices would be encouraged;

(8) the Public Treasury would be deprived of large sums of revenues and public finances would be seriously deranged by claims against the Public Treasury for refunds of taxes already paid;

(9) the cost to the Government of goods and services heretofore and hereafter purchased by its various departments and agencies would be unreasonably increased and the Public Treasury would be seriously affected by consequent increased cost of war contracts; and

(10) serious and adverse effects upon the revenues of Federal, State, and local governments would occur.
The Congress further finds that all of the foregoing constitutes a substantial burden on commerce and a substantial obstruction to the free flow of goods in commerce.

The Congress, therefore, further finds and declares that it is in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this chapter be enacted.

The Congress further finds that the varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, have given and will give rise to great difficulties in the sound and orderly conduct of business and industry.

The Congress further finds and declares that all of the results which have arisen or may arise under the Fair Labor Standards Act of 1938, as amended, as aforesaid, may (except as to liability for liquidated damages) arise with respect to the Walsh-Healey and Bacon-Davis Acts and that it is, therefore, in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this chapter shall apply to the Walsh-Healey Act and the Bacon-Davis Act.

(b) It is declared to be the policy of the Congress in order to meet the existing emergency and to correct existing evils

(1) to relieve and protect interstate commerce from practices which burden and obstruct it;
(2) to protect the right of collective bargaining; and
(3) to define and limit the jurisdiction of the courts.

Footnotes
1 See References in Text note below.

(May 14, 1947, ch. 52, § 1, 61 Stat. 84.)

References in Text

The Fair Labor Standards Act of 1938, as amended, referred to in subsec. (a), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning act May 14, 1947, ch. 52, 61 Stat. 84, known as the Portal-to-Portal Act of 1947, which enacted this chapter and amended section 216 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Walsh-Healey and Bacon-Davis Acts, referred to in subsec. (a), are defined for purposes of this chapter in section 262 of this title.

Short Title of 1996 Amendment

Pub. L. 104–188, [title II], § 2101, Aug. 20, 1996, 110 Stat. 1928, provided that: “This section and sections 2102 [amending section 254 of this title] and 2103 [enacting provisions set out as a note under section 254 of this title] may be cited as the ‘Employee Commuting Flexibility Act of 1996’.”

Short Title

Section 15 of act May 14, 1947, provided that: “This Act [enacting this chapter and amending section 216 of this title] may be cited as the ‘Portal-to-Portal Act of 1947’.”

Separability

Section 14 of act May 14, 1947, provided: “If any provision of this Act [see Short Title note above] 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.”
§ 252. Relief from certain existing claims under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, and the Bacon-Davis Act

(a) Liability of employer

No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.] the Walsh-Healey Act, or the Bacon-Davis Act (in any action or proceeding commenced prior to or on or after May 14, 1947), 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 activity of an employee engaged in prior to May 14, 1947, except an activity which was 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 was 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.

(b) Compensable activity

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

(c) Time of employment

In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], of the Walsh-Healey Act, or of the Bacon-Davis Act, in determining the time for which an employer employed an employee there shall be counted all that time, but only that time, during which the employee engaged in activities which were compensable within the meaning of subsections (a) and (b) of this section.

(d) Jurisdiction

No court of the United States, of any State, Territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any action or proceeding, whether instituted prior to or on or after May 14, 1947, to enforce liability or impose 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 [29 U.S.C. 201 et seq.], under the Walsh-Healey Act, or under the Bacon-Davis Act, to the extent that such action or proceeding seeks to enforce any liability or impose any punishment with respect to an activity which was not compensable under subsections (a) and (b) of this section.

(e) Assignment of actions

No cause of action based on unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act, which accrued prior to May 14, 1947, or any interest in such cause of action, shall hereafter be assignable, in whole or in part, to the extent that such cause of action is based on an activity which was not compensable within the meaning of subsections (a) and (b) of this section.

Footnotes

1 See References in Text note below.

(May 14, 1947, ch. 52, § 2, 61 Stat. 85.)
§ 253. Compromise and waiver

(a) Compromise of certain existing claims under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, or the Bacon-Davis Act; limitations

Any cause of action under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act, which accrued prior to May 14, 1947, or any action (whether instituted prior to or on or after May 14, 1947) to enforce such a cause of action, may hereafter be compromised in whole or in part, if there exists a bona fide dispute as to the amount payable by the employer to his employee; except that no such action or cause of action may be so compromised to the extent that such compromise is based on an hourly wage rate less than the minimum required under such Act, or on a payment for overtime at a rate less than one and one-half times such minimum hourly wage rate.

(b) Waiver of liquidated damages under Fair Labor Standards Act of 1938

Any employee may hereafter waive his right under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], to liquidated damages, in whole or in part, with respect to activities engaged in prior to May 14, 1947.

(c) Satisfaction

Any such compromise or waiver, in the absence of fraud or duress, shall, according to the terms thereof, be a complete satisfaction of such cause of action and a complete bar to any action based on such cause of action.

(d) Retroactive effect of section

The provisions of this section shall also be applicable to any compromise or waiver heretofore so made or given.

(e) “Compromise” defined

As used in this section, the term “compromise” includes “adjustment”, “settlement”, and “release”.

Footnotes

1 See References in Text note below.
§ 254. Relief from liability and punishment under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, and the Bacon-Davis Act for failure to pay minimum wage or overtime compensation

(a) Activities not compensable

Except as provided in subsection (b) of this section, no employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], 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 on or after May 14, 1947—

(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.

For purposes of this subsection, the use of an employer’s vehicle for travel by an employee and activities performed by an employee which are incidental to the use of such vehicle for commuting shall not be considered part of the employee’s principal activities if the use of such vehicle for travel is within the normal commuting area for the employer’s business or establishment and the use of the employer’s vehicle is subject to an agreement on the part of the employer and the employee or representative of such employee.

(b) Compensability by contract or custom

Notwithstanding the provisions of subsection (a) of this section which relieve an employer from liability and punishment with respect to any 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) Restriction on activities compensable under contract or custom

For the purposes of subsection (b) of this section, 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) Determination of time employed with respect to activities

In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], 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.

Footnotes

1 See References in Text note below.

§ 255. Statute of limitations

Any action commenced on or after May 14, 1947, 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 [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act

(a) if the cause of action accrues on or after May 14, 1947—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;

(b) if the cause of action accrued prior to May 14, 1947—may be commenced within whichever of the following periods is the shorter:

(1) two years after the cause of action accrued, or

(2) the period prescribed by the applicable State statute of limitations; and, except as provided in paragraph (c) of this section, every such action shall be forever barred unless commenced within the shorter of such two periods;

(c) if the cause of action accrued prior to May 14, 1947, the action shall not be barred by paragraph (b) of this section if it is commenced within one hundred and twenty days after May 14, 1947 unless at the time commenced it is barred by an applicable State statute of limitations;

(d) with respect to any cause of action brought under section 216 (b) of this title 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.

Footnotes

1 See References in Text note below.
§ 256. Determination of commencement of future actions

In determining when an action is commenced for the purposes of section 255 of this title, an action commenced on or after May 14, 1947 under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], the Walsh-Healey Act, or the Bacon-Davis Act,¹ 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,¹ 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.

Footnotes

¹ See References in Text note below.
§ 257. Pending collective and representative actions

The statute of limitations prescribed in section 255 (b) of this title shall also be applicable (in the case of a collective or representative action commenced prior to May 14, 1947 under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.]) to an individual claimant who has not been specifically named as a party plaintiff to the action prior to the expiration of one hundred and twenty days after May 14, 1947. In the application of such statute of limitations such action shall be considered to have been commenced as to him when, and only when, his written consent to become a party plaintiff to the action is filed in the court in which the action was brought.

(May 14, 1947, ch. 52, § 8, 61 Stat. 88.)

§ 258. Reliance on past administrative rulings, etc.

In any action or proceeding commenced prior to or on or after May 14, 1947 based on any act or omission prior to May 14, 1947, 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 [29 U.S.C. 201 et seq.], 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 administrative regulation, order, ruling, approval, or interpretation, of any agency of the United States, or any administrative practice or enforcement policy of any 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.

Footnotes

1 See References in Text note below.

(May 14, 1947, ch. 52, § 9, 61 Stat. 88.)
§ 259. Reliance in future on administrative rulings, etc.

(a) In any action or proceeding based on any act or omission on or after May 14, 1947, 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 [29 U.S.C. 201 et seq.], 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) of this section shall be—

1. in the case of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.]—the Administrator of the Wage and Hour Division of the Department of Labor;
2. in the case of the Walsh-Healey Act—the Secretary of Labor, or any Federal officer utilized by him in the administration of such Act; and
3. in the case of the Bacon-Davis Act—the Secretary of Labor.

Footnotes

1 See References in Text note below.

(May 14, 1947, ch. 52, § 10, 61 Stat. 89.)

References in Text

The Fair Labor Standards Act of 1938, as amended, referred to in text, is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see section 201 of this title and Tables.

The Walsh-Healey and Bacon-Davis Acts, referred to in text, are defined for purposes of this chapter in section 262 of this title.

Transfer of Functions


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, Government Organization and Employees.

§ 260. Liquidated damages

In any action commenced prior to or on or after May 14, 1947 to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], 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 216 of this title.


§ 261. Applicability of “area of production” regulations

No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], 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 an activity engaged in by such employee prior to December 26, 1946, if such employer—

(1) was not so subject by reason of the definition of an “area of production”, by a regulation of the Administrator of the Wage and Hour Division of the Department of Labor, which regulation was applicable at the time of performance of the activity even though at that time the regulation was invalid; or

(2) would not have been so subject if the regulation signed on December 18, 1946 (Federal Register, Vol. 11, p. 14648) had been in force on and after October 24, 1938.

(May 14, 1947, ch. 52, § 12, 61 Stat. 89.)

§ 262. Definitions

(a) When the terms “employer”, “employee”, and “wage” are used in this chapter in relation to the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], they shall have the same meaning as when used in such Act of 1938.

(b) When the term “employer” is used in this chapter in relation to the Walsh-Healey Act or Bacon-Davis Act it shall mean the contractor or subcontractor covered by such Act.
(c) When the term “employee” is used in this chapter in relation to the Walsh-Healey Act or the Bacon-Davis Act it shall mean any individual employed by the contractor or subcontractor covered by such Act in the performance of his contract or subcontract.

(d) The term “Wash-Healey Act” means the Act entitled “An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes”, approved June 30, 1936 (49 Stat. 2036), as amended; and the term “Bacon-Davis Act” means the Act entitled “An Act to amend the Act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings”, approved August 30, 1935 (49 Stat. 1011), as amended.?

(e) As used in section 255 of this title the term “State” means any State of the United States or the District of Columbia or any Territory or possession of the United States.

Footnotes
1 See References in Text note below.
2 So in original. Probably should be “Walsh-Healey Act”.

(May 14, 1947, ch. 52, § 13, 61 Stat. 90.)

References in Text
The Fair Labor Standards Act of 1938, as amended, referred to in subsec. (a), is act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see see section 201 of this title and Tables.

The Walsh-Healey Act and the Act entitled “An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes”, approved June 30, 1936, referred to in subsecs. (b) to (d), are act June 30, 1936, ch. 881, 49 Stat. 2036, which was classified principally to sections 35 to 45 of former Title 41, Public Contracts, and was substantially repealed and restated as chapter 65 (§ 6501 et seq.) of Title 41, Public Contracts, by Pub. L. 111–350, §§ 3, 7 (b), Jan. 4, 2011, 124 Stat. 3677, 3855. For complete classification of this Act to the Code, see Short Title of 1936 Act note set out under section 101 of Title 41 and Tables. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

The “Bacon-Davis Act”, as defined for purposes of this chapter in subsec. (d), is act Aug. 30, 1935, ch. 825, 49 Stat. 1011, which generally amended act Mar. 3, 1931, ch. 411, 46 Stat. 1494, popularly known as the “Davis-Bacon Act”, and which was classified to sections 276a to 276a–6 of former Title 40, Public Buildings, Property, and Works. Sections 276a to 276a–6 of former Title 40 were repealed and reenacted as sections 3141–3144, 3146, and 3147 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§ 1, 6 (b), Aug. 21, 2002, 116 Stat. 1062, 1304.