

Public Law 95-151
95th Congress

An Act

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

Nov. 1, 1977
 [H.R. 3744]

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

Fair Labor
 Standards
 Amendments of
 1977.
 29 USC 201 note.

SHORT TITLE: REFERENCE TO ACT

SECTION 1. (a) This Act may be cited as the "Fair Labor Standards Amendments of 1977".

(b) Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Fair Labor Standards Act of 1938 (29 U.S.C. 201-219).

INCREASE IN MINIMUM WAGE

SEC. 2. (a) Section 6(a)(1) (29 U.S.C. 206(a)(1)) is amended to read as follows:

"(1) not less than \$2.65 an hour during the year beginning January 1, 1978, not less than \$2.90 an hour during the year beginning January 1, 1979, not less than \$3.10 an hour during the year beginning January 1, 1980, and not less than \$3.35 an hour after December 31, 1980, except as otherwise provided in this section;"

(b) Section 6(a)(5) (29 U.S.C. 206(a)(5)) is amended to read as follows:

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

(c) Section 6(b) (29 U.S.C. 206(b)) is amended by striking out "wages at the following rates:" and paragraphs (1) through (4) and inserting in lieu thereof the following: "wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1)."

(d)(1) Section 6(c) (29 U.S.C. 206(c)) is amended by striking out paragraphs (2) through (4) and inserting in lieu thereof the following:

"(2)(A) Each wage order rate under a wage order described in paragraph (1) which on December 31, 1977, is at least \$2 an hour shall, except as provided in paragraph (3), be increased—

"(i) effective January 1, 1978, by \$0.25 an hour or by such greater amount as may be recommended by a special industry committee under section 8, and

"(ii) effective January 1, 1979, and January 1 of each succeeding year, by \$0.30 an hour or by such greater amount as may be so recommended by such a special industry committee.

Effective dates.

"(B) Each wage order rate under a wage order described in paragraph (1) which on December 31, 1977, is less than \$2 an hour shall, except as provided in paragraph (3), be increased—

"(i) effective January 1, 1978, by \$0.20 an hour or by such greater amount as may be recommended by a special industry committee under section 8, and

"(ii) effective January 1, 1979, and January 1 of each succeeding year—

"(I) until such wage order rate is not less than \$2.30 an hour, by \$0.25 an hour or by such greater amount as may be so recommended by a special industry committee, and

"(II) if such wage order rate is not less than \$2.30 an hour, by \$0.30 an hour or by such greater amount as may be so recommended by a special industry committee.

"(C) In the case of any employee in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 5, to whom the rate or rates prescribed by subsection (a) (5) of this section would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the applicable increases prescribed by subparagraph (A) or (B) shall be applied to the sum of the wage rate in effect under such wage order and the amount by which the employee's hourly wage is increased by the subsidy (or income supplement) above the wage rate in effect under such wage order."

Ante, p. 1245.

(2) (A) Section 6(c) (1) is amended (i) by striking out "subsections (a) and (b)" and inserting in lieu thereof "subsection (a) (1)", (ii) by inserting "(A)" before "heretofore", and (iii) by inserting before the period the following: "and (B) which prescribes a wage order rate which is less than the wage rate in effect under subsection (a) (1)".

(B) Paragraphs (5) and (6) of section 6(c) are redesignated as paragraphs (3) and (4), respectively.

(C) Paragraph (3) of such section (as so redesignated) is amended (i) by striking out "subsection (a) or (b)" and inserting in lieu thereof "subsection (a) (1)", and (ii) by striking out "such subsection" and inserting in lieu thereof "subsection (a) (1)".

(D) Paragraph (4) of such section (as so redesignated) is amended by striking out "or (3)".

(3) Section 8(a) is amended by inserting after the first sentence the following new sentence: "The Secretary shall, from time to time, convene an industry committee or committees, appointed pursuant to section 5, and any such industry committee—

"(1) shall, from time to time, recommend the minimum wage rates to be paid by employers who are in Puerto Rico, in the Virgin Islands, or in both places and who but for section 6(c) would be subject to the minimum wage requirements of section 6(a) (1), and

"(2) may, from time to time, recommend increases in the incremental increases authorized by section 6(c) (2)."

(e) (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—

Puerto Rico and
the Virgin
Islands.
Industry
committees,
convention.
29 USC 208.
Supra.
Ante, p. 1245.

Minimum Wage
Study
Commission.
Establishment.
Study.
29 USC 204 note.
29 USC 201.

(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 rate 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.

Study and report.

29 USC 201.

"Conglomerate."

Report to
President and
Congress.
Legislative
recommendations.
Interim reports.
Termination.

Membership.

- (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.

**Chairperson.
Vacancies.**

(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.

Compensation.

(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.

**5 USC 5332 note.
Travel expenses.**

(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.

Rules.

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

Hearings.

(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.

Support services.

(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.

**Executive
director,
appointment.**

(6) (A) 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.

**5 USC 5101 et
seq., 5331 et seq.
5 USC 5332 note.**

(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.

Experts and consultants.

TIP CREDIT

SEC. 3. (a) Effective January 1, 1978, section 3(t) (29 U.S.C. 203(t)) is amended by striking out "\$20" and inserting in lieu thereof "\$30".

Effective dates.

(b) (1) Effective January 1, 1979, section 3(m) (29 U.S.C. 203(m)) is amended by striking out "50 per centum" and inserting in lieu thereof "45 per centum".

(2) Effective January 1, 1980, such section is amended by striking out "45 per centum" and inserting in lieu thereof "40 per centum".

EMPLOYEES OF CONCESSIONERS IN NATIONAL PARKS AND FORESTS AND IN THE NATIONAL WILDLIFE REFUGE SYSTEM

SEC. 4. (a) Section 13(a)(3) (29 U.S.C. 213(a)(3)) is amended by inserting before the semicolon the following: "except that the exemption from sections 6 and 7 provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 6, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a 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".

Exemptions.

29 USC 206, 207.

(b) Section 13(b) (29 U.S.C. 213(b)) is amended (A) by striking out the period at the end of paragraph (28) and inserting in lieu thereof "; or", and (B) by adding after such paragraph the following new paragraph:

"(29) 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 (A) 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."

SHADE-GROWN TOBACCO EMPLOYEES

SEC. 5. Section 13(b)(22) (29 U.S.C. 213(b)(22)) is repealed.

Repeal.

COTTON GINNING EMPLOYEES

SEC. 6. (a) Section 13(b)(25) (29 U.S.C. 213(b)(25)) is repealed.

Repeal.

(b) Section 13 is amended by adding after subsection (h) the following new subsection:

Exemptions.

"(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 week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.”.

SUGAR EMPLOYEES

Repeal.

Exemptions.

29 USC 207.

SEC. 7. (a) Section 13(b) (26) (29 U.S.C. 213(b) (26)) is repealed. (b) Section 13 is amended by inserting after the subsection added by section 6 the following new subsection:

“(j) 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 processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup; 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 week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.”.

AGRICULTURAL HAND HARVEST LABORERS

Exemptions.

Waiver,
application.

29 USC 212.

SEC. 8. Section 13(c) (29 U.S.C. 213(c)) is amended—

(1) in paragraph (1) by inserting after “paragraph (2)” the following: “or (4)”, and

(2) by adding after paragraph (3) the following new paragraph:

“(4) (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 with such other terms and conditions as the Secretary shall prescribe for such individuals’ protection.”.

RETAIL AND SERVICE ESTABLISHMENT COVERAGE

SEC. 9. (a) Section 3(s) (29 U.S.C. 203(s)) is amended by renumbering paragraphs (2), (3), (4), and (5) as paragraphs (3), (4), (5), and (6), respectively, and inserting after paragraph (1) the following:

“(2) is an enterprise which is comprised exclusively of one or more retail or service establishments, as defined in section 13(a)(2), and whose annual gross volume of sales made or business done is not less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated), beginning July 1, 1978, whose annual gross volume of sales made or business done is not less than \$275,000 (exclusive of excise taxes at the retail level which are separately stated), beginning July 1, 1980, whose annual gross volume of sales made or business done is not less than \$325,000 (exclusive of excise taxes at the retail level which are separately stated), and after December 31, 1981, whose annual gross volume of sales made or business done is not less than \$362,500 (exclusive of excise taxes at the retail level which are separately stated);”.

(b) Paragraph (1) of section 3(s) is amended by adding after “and beginning February 1, 1969, is an enterprise” the following: “, other than an enterprise which is comprised exclusively of retail or service establishments and which is described in paragraph (2).”.

(c) Section 3(s) is amended by adding at the end the following: “Notwithstanding paragraph (2), an enterprise which is comprised of one or more retail or service establishments, which on June 30, 1978, was subject to section 6(a)(1), and which because of a change in the dollar volume standard in such paragraph prescribed by the Fair Labor Standards Amendments of 1977 is not subject to such section, shall, if its annual gross volume of sales made or business done is not less than \$250,000 (exclusive of excise taxes at the retail level which are separately stated), pay its employees not less than the minimum wage in effect under such section on the day before such change takes effect and shall pay its employees in accordance with section 7. A violation of the preceding sentence shall be considered a violation of section 6 or 7, as the case may be.”.

(d) Section 13(a)(2) is amended by striking out “section 3(s)(4)” and inserting in lieu thereof “section 3(s)(5)”.

“Enterprise engaged in commerce or in the production of goods for commerce.”
Infra.

Supra.

Ante, p. 1245.

29 USC 207.
Violation.

29 USC 213.

REMEDIES

Violations.

29 USC 215.

SEC. 10. (a) Section 16(b) (29 U.S.C. 216(b)) is amended by adding immediately after the first sentence the following new sentence: "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."

(b) Section 16(b) is further amended by—

(1) by striking out "Action to recover such liability" and inserting in lieu thereof "An action to recover the liability prescribed in either of the preceding sentences",

(2) inserting "(1)" after "section 17 in which", and

(3) striking the period at the end of the last sentence and substituting the following: "or (2) legal or equitable relief is sought as a result of alleged violations of section 15(a) (3)."

(c) The third sentence of section 16(c) is amended by inserting after "an action by or on behalf of any employee" the following: "to recover the liability specified in the first sentence of such subsection".

RELIGIOUS OR NON-PROFIT EDUCATIONAL CONFERENCE CENTERS

SEC. 11. Section 13(a) (3) (29 U.S.C. 213(a) (3)) is amended by inserting after "recreational establishment," the following: "organized camp, or religious or non-profit educational conference center,".

STUDENTS

SEC. 12. (a) Section 14(b) (4) (B) (29 U.S.C. 214(b) (4) (B)) is amended by striking "four" each time it appears and substituting "six".

REDUCTION OF PAPERWORK FOR EMPLOYMENT OF STUDENTS BY SMALL BUSINESSES

Simplified application form.

SEC. 13. Section 14(b) (4) (29 U.S.C. 214(b) (4)) is amended by adding at the end the following new subparagraph:

"(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—

Requirements.

"(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 opportunities of persons other than persons employed under special certificates."

HOTEL, MOTEL, AND RESTAURANT EMPLOYEES

Effective date.

SEC. 14. (a) Effective January 1, 1978, section 13(b) (8) (29 U.S.C. 213(b) (8)) is amended by striking out "forty-six hours" and inserting in lieu thereof "forty-four hours".

Repeal; effective date.

(b) Effective January 1, 1979, such section is repealed.

EFFECTIVE DATE

SEC. 15. (a) Except as provided in sections 3, 14, and subsection (b) of this section, the amendments made by this Act shall take effect January 1, 1978. 29 USC 203 note.

(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. Implementation, administrative action.

Approved November 1, 1977.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-521 (Comm. on Education and Labor) and No. 95-711 (Comm. of Conference).

SENATE REPORTS: No. 95-440 accompanying S. 1871 and No. 95-446 (both from Comm. on Human Resources) and No. 95-497 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 123 (1977):

Sept. 14, 15, considered and passed House.

Oct. 7, considered and passed Senate, amended, in lieu of S. 1871.

Oct. 19, Senate agreed to conference report.

Oct. 20, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 13, No. 45:

Nov. 1, Presidential statement.