Editorial Notes

AMENDMENTS

2011—Subsec. (a)(3). Pub. L. 112–10 struck out ''and the employer does not offer a free choice voucher'' after ''Exchange''.

2010—Subsec. (a)(3). Pub. L. 111–148, § 10108(i)(2), inserted ''and the employer does not offer a free choice voucher'' after ''Exchange'' and substituted ''may lose'' for ''will lose''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–10 effective as if included in the provisions of, and the amendments made by, the provisions of Pub. L. 111–148 to which it relates, see section 1858(d) of Pub. L. 112–10, set out as a note under section 36B of Title 26, Internal Revenue Code.

§ 218c. Protections for employees

(a) Prohibition

No employer shall discharge or in any manner discriminate against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment because the employee (or an individual acting at the request of the employee) has—

(1) received a credit under section 36B of title 26 or a subsidy under section 18071 of title 42; [1]

(2) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of this title [1] (or an amendment made by this title); [1]

(3) testified or is about to testify in a proceeding concerning such violation;

(4) assisted or participated, or is about to assist or participate, in such a proceeding; or

(5) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this title [1] (or amendment), or any order, rule, regulation, standard, or ban under this title [1] (or amendment).

(b) Complaint procedure

(1) In general

An employee who believes that he or she has been discharged or otherwise discriminated against by any employer in violation of this section may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15.

(2) No limitation on rights

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

(June 25, 1938, ch. 676, § 18C, as added Pub. L. 111–148, title I, § 1558, Mar. 23, 2010, 124 Stat. 261.)

[1] See References in Text note below.

Editorial Notes

REFERENCES IN TEXT

Section 18071 of title 42, referred to in subsec. (a)(1), was in the original ''section 1402 of this Act'', and was translated as meaning section 1402 of the Patient Protection and Affordable Care Act, which is classified to section 18071 of title 42, to reflect the probable intent of Congress.

This title, referred to in subsec. (a)(2), (5), probably means title I of Pub. L. 111–148, Mar. 23, 2011, 124 Stat. 130. For complete classification of title I to the Code, see Tables.

Section 2087(b) of title 15, referred to in subsec. (b)(1), was in the original ''section 2807(b) of title 15'', and probably should have read ''section 40(b) of the Consumer Product Safety Act'', which is classified to section 2087(b) of Title 15, Commerce and Trade.

§ 218d. Breastfeeding accommodations in the workplace

(a) In general

An employer shall provide—

(1) a reasonable break time for an employee to express breast milk for such employee's nursing child for 1 year after the child's birth each time such employee has need to express the milk; and

(2) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

(b) Compensation

(1) In general

Subject to paragraph (2), an employer shall not be required to compensate an employee receiving reasonable break time under subsection (a)(1) for any time spent during the workday for such purpose unless otherwise required by Federal or State law or municipal ordinance.

(2) Relief from duties

Break time provided under subsection (a)(1) shall be considered hours worked if the employee is not completely relieved from duty during the entirety of such break.

(c) Exemption for small employers

An employer that employs less than 50 employees shall not be subject to the requirements of this section, if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer's business.

(d) Exemption for crewmembers of air carriers

(1) In general

An employer that is an air carrier shall not be subject to the requirements of this section with respect to an employee of such air carrier who is a crewmember [1]

(2) Definitions

In this subsection:

(A) Air carrier

The term ''air carrier'' has the meaning given such term in section 40102 of title 49.

[1] So in original. Probably should be followed by a period.

(B) Crewmember

The term ''crewmember'' has the meaning given such term in section 1.1 of title 14, Code of Federal Regulations (or successor regulations).

(e) Applicability to rail carriers

(1) In general

Except as provided in paragraph (2), an employer that is a rail carrier shall be subject to the requirements of this section.

(2) Certain employees

An employer that is a rail carrier shall be subject to the requirements of this section with respect to an employee of such rail carrier who is a member of a train crew involved in the movement of a locomotive or rolling stock or who is an employee who maintains the right of way, provided that compliance with the requirements of this section does not—

(A) require the employer to incur significant expense, such as through the addition of such a member of a train crew in response to providing a break described in subsection (a)(1) to another such member of a train crew, removal or retrofitting of seats, or the modification or retrofitting of a locomotive or rolling stock; or

(B) result in unsafe conditions for an individual who is an employee who maintains the right of way.

(3) Significant expense

For purposes of paragraph (2)(A), it shall not be considered a significant expense to modify or retrofit a locomotive or rolling stock by installing a curtain or other screening protection.

(4) Definitions

In this subsection:

(A) Employee who maintains the right of way

The term ''employee who maintains the right of way'' means an employee who is a safety-related railroad employee described in section 20102(4)(C) of title 49.

(B) Rail carrier

The term ''rail carrier'' means an employer described in section 213(b)(2) of this title.

(C) Train crew

The term ''train crew'' has the meaning given such term as used in chapter II of subtitle B of title 49, Code of Federal Regulations (or successor regulations).

(f) Applicability to motorcoach services operators

(1) In general

Except as provided in paragraph (2), an employer that is a motorcoach services operator shall be subject to the requirements of this section.

(2) Employees who are involved in the movement of a motorcoach

An employer that is a motorcoach services operator shall be subject to the requirements of this section with respect to an employee of such motorcoach services operator who is involved in the movement of a motorcoach provided that compliance with the requirements of this section does not—

(A) require the employer to incur significant expense, such as through the removal or retrofitting of seats, the modification or retrofitting of a motorcoach, or unscheduled stops; or

(B) result in unsafe conditions for an employee of a motorcoach services operator or a passenger of a motorcoach.

(3) Significant expense

For purposes of paragraph (2)(A), it shall not be considered a significant expense—

(A) to modify or retrofit a motorcoach by installing a curtain or other screening protection if an employee requests such a curtain or other screening protection; or

(B) for an employee to use scheduled stop time to express breast milk.

(4) Definitions

In this subsection:

(A) Motorcoach; motorcoach services

The terms ''motorcoach'' and ''motorcoach services'' have the meanings given the terms in section 32702 of the Motorcoach Enhanced Safety Act of 2012 (49 U.S.C. 31136 note).

(B) Motorcoach services operator

The term ''motorcoach services operator'' means an entity that offers motorcoach services.

(g) Notification prior to commencement of action

(1) In general

Except as provided in paragraph (2), before commencing an action under section 216(b) of this title for a violation of subsection (a)(2), an employee shall—

(A) notify the employer of such employee of the failure to provide the place described in such subsection; and

(B) provide the employer with 10 days after such notification to come into compliance with such subsection with respect to the employee.

(2) Exceptions

Paragraph (1) shall not apply in a case in which—

(A) the employee has been discharged because the employee—

(i) has made a request for the break time or place described in subsection (a); or

(ii) has opposed any employer conduct related to this section; or

(B) the employer has indicated that the employer has no intention of providing the place described in subsection (a)(2).

(h) Interaction with State and Federal law

(1) Laws providing greater protection

Nothing in this section shall preempt a State law or municipal ordinance that provides greater protections to employees than the protections provided for under this section.

(2) No effect on title 49 preemption

This section shall have no effect on the preemption of a State law or municipal ordinance that is preempted under subtitle IV, V, or VII of title 49.

(June 25, 1938, ch. 676, § 18D, as added Pub. L. 117–328, div. KK, § 102(a)(2), Dec. 29, 2022, 136 Stat. 6093.)

Editorial Notes

REFERENCES IN TEXT

The Motorcoach Enhanced Safety Act of 2012, referred to in subsec. (f)(4)(A), is subtitle G of title II of div. C of Pub. L. 112–141, which is set out as a note under section 31136 of Title 49, Transportation.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (a) to (c) of this section were contained in section 207(r) of this title prior to repeal by Pub. L. 117–328, § 102(a)(1).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on Dec. 29, 2022, see section 103(a) of div. KK of Pub. L. 117–328, set out as an Effective Date of 2022 Amendment note under section 207 of this title.

DELAYED APPLICATION OF LAW TO EMPLOYEES OF RAIL CARRIERS

Pub. L. 117–328, div. KK, § 103(d), Dec. 29, 2022, 136 Stat. 6096, provided that:

''(1) IN GENERAL.—Section 18D of the Fair Labor Standards Act of 1938 [29 U.S.C. 218d] (as added by section 102(a)) shall not apply to employees who are members of a train crew involved in the movement of a locomotive or rolling stock or who are employees who maintain the right of way of an employer that is a rail carrier until the date that is 3 years after the date of enactment of this Act [Dec. 29, 2022].

''(2) DEFINITIONS.—In this subsection:

''(A) EMPLOYEE; EMPLOYER.—The terms 'employee' and 'employer' have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

''(B) EMPLOYEES [sic] WHO MAINTAINS THE RIGHT OF WAY; RAIL CARRIER; TRAIN CREW.—The terms 'employee who maintains the right of way', 'rail carrier', and 'train crew' have the meanings given such terms in section 18D(e)(4) of the Fair Labor Standards Act of 1938 [29 U.S.C. 218d(e)(4)], as added by section 102(a).''

DELAYED APPLICATION OF LAW TO EMPLOYEES OF MOTORCOACH SERVICES OPERATORS

Pub. L. 117–328, div. KK, § 103(e), Dec. 29, 2022, 136 Stat. 6097, provided that:

''(1) IN GENERAL.—Section 18D of the Fair Labor Standards Act of 1938 [29 U.S.C. 218d] (as added by section 102(a)) shall not apply to employees who are involved in the movement of a motorcoach of an employer that is a motorcoach services operator until the date that is 3 years after the date of enactment of this Act [Dec. 29, 2022].

''(2) DEFINITIONS.—In this subsection:

''(A) EMPLOYEE; EMPLOYER.—The terms 'employee' and 'employer' have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

''(B) MOTORCOACH; MOTORCOACH SERVICES OPERATOR.—The terms 'motorcoach' and 'motorcoach services operator' have the meanings given such terms in section 18D(f)(4) of the Fair Labor Standards Act of 1938 [29 U.S.C. 218d(f)(4)], as added by section 102(a).''

§ 219. Separability

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

(June 25, 1938, ch. 676, § 19, 52 Stat. 1069.)

CHAPTER 9—PORTAL-TO-PORTAL PAY

Sec.

§ 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