(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

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[1] 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.[1]

(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.

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

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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

Act May 14, 1947, ch. 52, §15, 61 Stat. 90, 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

Act May 14, 1947, ch. 52, §14, 61 Stat. 90, 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[1] (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), 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

[1] See References in Text note below.

[1] See References in Text note below.