

Chapter 6.

Fair Labor Standards Act

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I. INTRODUCTION

§6:00 Overview

The Fair Labor Standards Act of 1938 establishes minimum wage and overtime standards for employees who are “engaged in commerce or in the production of goods for commerce.” Covered employers include “any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.” 29 U.S.C. §203(d).

The Act simply defines “employee” as “any individual employed by an employer.” 29 U.S.C. §203(e)(1). The courts have broadly interpreted the term “employee.” If an employer “suffers or permits” an individual to work, an employment relationship results under the Fair Labor Standards Act regardless of whether the parties intended to create an employment relationship. *v. Partida*, 492 F.2d 707, 709 (5th Cir. 1974). The concept of employment under the Act is very broad and is tested by the “economic realities” of the relationship. The economic reality test is used in determining whether an individual is an employee or an independent contractor.

The federal minimum wage for covered non-exempt employees is currently \$5.15 per hour. Many states also have minimum wage laws. Where an employee is subject to both the state and federal minimum wage laws, the employee is entitled to the higher minimum wage. There are minimum wage exceptions applicable under specific circumstances to disabled workers, full-time students, youth under the age of twenty in their first ninety consecutive calendar days of

employment, tipped employees and student-learners.

The Fair Labor Standards Act requires overtime pay at a rate of not less than one and one-half times an employee’s regular rate of pay after forty hours of work in a work week. The Act does not require daily overtime or overtime for hours worked on weekends or holidays. The Fair Labor Standards Act does provide exemptions from the overtime pay provisions, and there are some exemptions which exclude certain employees from both the minimum wage and overtime provisions of the Act. The exemptions are narrowly construed against the employer, and the employer bears the burden of proving that the exemption actually applies. Some of the commonly claimed exemptions include “white collar” exemptions for professional, executive and administrative employees. There are additional exemptions which include but are not limited to outside salespersons, drivers, farm workers, amusement and recreational establishments, camps, conference centers, fishing industry, small newspapers, seamen, and domestic employees. See 29 U.S.C. §213.

Wage and hour problems under the Act typically arise in trying to determine what time constitutes hours worked by the employee. The federal regulations under the Act address such issues as waiting time, on call time, rest and meal periods, sleeping time, attendance at lectures, meetings and training programs, and travel time.

References: For discussion of gender issues arising in equal pay claims, see Chapter 1, Gender Discrimination.

§6:10 Enforcement

The United States Department of Labor, Wage and Hour Division, is primarily responsible for the enforcement of the Fair Labor Standards Act. Employers subject to the Act are required to post compliance posters to give employees knowledge of the Act and of its applicability to their employment. The Wage and Hour Division has authority to conduct investigations and inspections to determine if violations of the FLSA are being committed.

§6:20 Remedies

The Wage and Hour Division is authorized to file suit against an employer who does not voluntarily come into compliance with these Acts. The Wage and Hour Division may seek an injunction to restrain the employer from violating the FLSA. Additionally, the Wage and Hour Division could bring a suit to recover minimum wages and overtime pay owed to the employee, as well as an equal additional amount for liquidated damages. Individuals are also permitted to bring a private action against an employer to recover any back wages due under the FLSA plus an equal additional amount of liquidated damages. In addition to back pay and liquidated damages, the individual may recover a reasonable attorneys fee.

Suits for back pay are subject to good faith defenses made available by the Portal-to-Portal Act. 29 U.S.C. §259; *Clifton D. Mayhew, Inc. v. Wirtz*, 413 F.2d 658 (4th Cir. 1969). If an employer can prove that it acted in good faith reliance on and in compliance with specified administrative rulings or regulations, it may avoid liability for back pay and liquidated damages. The court has discretion to reduce the amount of liquidated damages if the employer proves it acted in

good faith and with reasonable grounds for believing that no violation was being committed. 29 U.S.C. §260.

Claims for unpaid minimum wages and unpaid overtime compensation are subject to a two-year statute of limitations unless the employer's violations are willful. For willful violations, a three-year statute of limitations applies. 29 U.S.C. §255(a).