

**§ 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,<sup>1</sup> 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such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.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<sup>1</sup>—the Secretary of Labor.

(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

Functions relating to enforcement and administration of equal pay provisions vested by subsec. (b)(1) of this section in Administrator of Wage and Hour Division of Department of Labor transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §1, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

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.

(May 14, 1947, ch. 52, §11, 61 Stat. 89; Pub. L. 93-259, §6(d)(2)(B), Apr. 8, 1974, 88 Stat. 62.)

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, as amended, 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.

AMENDMENTS

1974—Pub. L. 93-259 substituted “section 216 of this title” for “section 216(b) of this title”.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as a note under section 202 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.)

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, as amended, 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.

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.

<sup>1</sup> See References in Text note below.

**§ 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 the Bacon-Davis Act<sup>1</sup> 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<sup>1</sup> 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”<sup>2</sup> 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;<sup>1</sup> 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.<sup>1</sup>

(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.

(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 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 subssecs. (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.

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be “Walsh-Healey Act”.

**CHAPTER 10—DISCLOSURE OF WELFARE AND PENSION PLANS****§§ 301 to 309. Repealed. Pub. L. 93-406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851**

Section 301, Pub. L. 85-836, §2, Aug. 28, 1958, 72 Stat. 997, set forth Congressional findings and policy with respect to welfare and pension plan disclosure. See section 1001 of this title.

Section 302, Pub. L. 85-836, §3, Aug. 28, 1958, 72 Stat. 997; Pub. L. 86-624, §21(d), July 12, 1960, 74 Stat. 417; Pub. L. 87-420, §§2-5, Mar. 20, 1962, 76 Stat. 35, provided definitions for this chapter. See section 1002 of this title.

Section 303, Pub. L. 85-836, §4, Aug. 28, 1958, 72 Stat. 998; Pub. L. 87-420, §6, Mar. 20, 1962, 76 Stat. 35, related to plans covered within chapter. See section 1003 of this title.

Section 304, Pub. L. 85-836, §5, Aug. 28, 1958, 72 Stat. 998; Pub. L. 87-420, §7, Mar. 20, 1962, 76 Stat. 36, related to duties of administrator and definition of “administrator”. See sections 1002(16)(A) and 1021 of this title.

Section 305, Pub. L. 85-836, §6, Aug. 28, 1958, 72 Stat. 999; Pub. L. 87-420, §8, Mar. 20, 1962, 76 Stat. 36, related to time for publication and contents of plan. See section 1022 of this title.

Section 306, Pub. L. 85-836, §7, Aug. 28, 1958, 72 Stat. 1000; Pub. L. 87-420, §§9-13, Mar. 20, 1962, 76 Stat. 36, 37, related to time for publication, contents, etc., of annual reports. See section 1023 of this title.

Section 307, Pub. L. 85-836, §8, Aug. 28, 1958, 72 Stat. 1002; Pub. L. 87-420, §§14, 18, Mar. 20, 1962, 76 Stat. 37, 43, related to publication of description of plan and annual report. See section 1024 of this title.

Section 308, Pub. L. 85-836, §9, Aug. 28, 1958, 72 Stat. 1002; Pub. L. 87-420, §15, Mar. 20, 1962, 76 Stat. 37, related to enforcement provisions. See section 1131 et seq. of this title.

Section 308a, Pub. L. 85-836, §10, as added Pub. L. 87-420, §16(a), Mar. 20, 1962, 76 Stat. 38, related to reports as public information. See section 1026 of this title.

Section 308b, Pub. L. 85-836, §11, as added Pub. L. 87-420, §16(a), Mar. 20, 1962, 76 Stat. 38, related to retention of records. See section 1027 of this title.

Section 308c, Pub. L. 85-836, §12, as added Pub. L. 87-420, §16(a), Mar. 20, 1962, 76 Stat. 38, related to reliance on administrative interpretations and forms. See section 1028 of this title.

Section 308d, Pub. L. 85-836, §13, as added Pub. L. 87-420, §16(a), Mar. 20, 1962, 76 Stat. 39, related to bonding requirements. See section 1112 of this title.

Section 308e, Pub. L. 85-836, §14, as added Pub. L. 87-420, §16(a), Mar. 20, 1962, 76 Stat. 40, related to establishment, membership, duties, etc., of Advisory Council on Employee Welfare and Pension Benefit Plans. See section 1142 of this title.

Section 308f, Pub. L. 85-836, §15, as added Pub. L. 87-420, §16(a), Mar. 20, 1962, 76 Stat. 41, related to administration of provisions of chapter. See section 1137 of this title.

Section 309, Pub. L. 85-836, §16, formerly §10, Aug. 28, 1958, 72 Stat. 1002, renumbered and amended Pub. L. 87-420, §16(a), (b), Mar. 20, 1962, 76 Stat. 38, 41, related to effect of other laws on provisions of this chapter. See section 1144 of this title.

## EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1975, except that chapter to remain applicable to any conduct and events which occurred before Jan. 1, 1975, see section 1031 of this title.

The Secretary of Labor was empowered, in the case of a plan which has a plan year which begins before Jan. 1, 1975, and ends after Dec. 31, 1974, to postpone by regulation the effective date of the repeal of any provision of this chapter until the beginning of the first plan year of such plan which begins after Jan. 1, 1975, pursuant to section 1031(b)(2) of this title.