

ployee an employer who is required to withhold payroll taxes for such employee.

“(C) PROOF.—

“(i) IN GENERAL.—An individual is responsible for providing the requisite proof of previous period or periods of employment with other employers. An employer’s good faith reliance on the proof presented to the employer by an individual shall constitute a complete defense to a charge that the employer has violated subsection (b)(2) with respect to such individual.

“(ii) REGULATIONS.—The Secretary of Labor shall issue regulations defining the requisite proof required of an individual. Such regulations shall establish minimal requirements for requisite proof and may prescribe that an accurate list of the individual’s employers and a statement of the dates and duration of employment with each employer constitute requisite proof.

“(2) ON-THE-JOB TRAINING.—The term ‘on-the-job training’ means training that is offered to an individual while employed in productive work that provides training, technical and other related skills, and personal skills that are essential to the full and adequate performance of such employment.

“(h) EMPLOYER REQUIREMENTS.—An employer who wants to employ employees at the wage authorized by subsection (a) for the period authorized by subsection (g)(1)(B)(ii) shall—

“(1) notify the Secretary annually of the positions at which such employees are to be employed at such wage.

“(2) provide on-the-job training to such employees which meets general criteria of the Secretary issued by regulation after consultation with the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate and the Committee on Education and Labor [now Committee on Education and the Workforce] of the House of Representatives and other interested persons.

“(3) keep on file a copy of the training program which the employer will provide such employees,

“(4) provide a copy of the training program to the employees,

“(5) post in a conspicuous place in places of employment a notice of the types of jobs for which the employer is providing on-the-job training, and

“(6) send to the Secretary on an annual basis a copy of such notice.

The Secretary shall make available to the public upon request notices provided to the Secretary by employers in accordance with paragraph (6).

“(i) REPORT.—The Secretary of Labor shall report to Congress not later than March 1, 1993, on the effectiveness of the wage authorized by subsection (a). The report shall include—

“(1) an analysis of the impact of such wage on employment opportunities for inexperienced workers;

“(2) any reduction in employment opportunities for experienced workers resulting from the employment of employees under such wage;

“(3) the nature and duration of the training provided under such wage; and

“(4) the degree to which employers used the authority to pay such wage.”

PRACTICE OF PUBLIC AGENCY IN TREATING CERTAIN INDIVIDUALS AS VOLUNTEERS PRIOR TO APRIL 15, 1986; LIABILITY

Certain public agencies not to be liable for violations of this section occurring before Apr. 15, 1986, with respect to services deemed by that agency to have been performed for it by an individual on a voluntary basis,

see section 4(c) of Pub. L. 99-150, set out as a note under section 203 of this title.

EFFECT OF AMENDMENTS BY PUBLIC LAW 99-150 ON PUBLIC AGENCY LIABILITY RESPECTING ANY EMPLOYEE COVERED UNDER SPECIAL ENFORCEMENT POLICY

Amendment by Pub. L. 99-150 not to affect liability of certain public agencies under section 216 of this title for violation of this section occurring before Apr. 15, 1986, see section 7 of Pub. L. 99-150, set out as a note under section 216 of this title.

INAPPLICABILITY TO NORTHERN MARIANA ISLANDS

Pursuant to section 503(c) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands with the United States of America, as set forth in Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, set out as a note under section 1801 of Title 48, Territories and Insular Possessions, this section is inapplicable to the Northern Mariana Islands.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89-601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89-601, see section 602 of Pub. L. 89-601, set out as a note under section 203 of this title.

CONGRESSIONAL FINDING AND DECLARATION OF POLICY

Pub. L. 88-38, §2, June 10, 1963, 77 Stat. 56, provided that:

“(a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex—

“(1) depresses wages and living standards for employees necessary for their health and efficiency;

“(2) prevents the maximum utilization of the available labor resources;

“(3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;

“(4) burdens commerce and the free flow of goods in commerce; and

“(5) constitutes an unfair method of competition.

“(b) It is hereby declared to be the policy of this Act [amending this section, and enacting provisions set out as notes under this section], through exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct the conditions above referred to in such industries.”

DEFINITION OF “ADMINISTRATOR”

The term “Administrator” as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

§ 207. Maximum hours

(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions

(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(2) No employer shall employ any of his employees who in any workweek is engaged in com-

merce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this subsection by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966—

(A) for a workweek longer than forty-four hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966,

(B) for a workweek longer than forty-two hours during the second year from such date, or

(C) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

(b) Employment pursuant to collective bargaining agreement; employment by independently owned and controlled local enterprise engaged in distribution of petroleum products

No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand and forty hours during any period of twenty-six consecutive weeks; or

(2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two consecutive weeks the employee shall be employed not more than two thousand two hundred and forty hours and shall be guaranteed not less than one thousand eight hundred and forty-hours (or not less than forty-six weeks at the normal number of hours worked per week, but not less than thirty hours per week) and not more than two thousand and eighty hours of employment for which he shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under subsection (a) or two thousand and eighty in such period at rates not less than one and one-half times the regular rate at which he is employed; or

(3) by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—

(A) the annual gross volume of sales of such enterprise is less than \$1,000,000 exclusive of excise taxes,

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale,

and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 206 of this title,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c), (d) Repealed. Pub. L. 93-259, § 19(e), Apr. 8, 1974, 88 Stat. 66

(e) "Regular rate" defined

As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include—

(1) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment;

(3) Sums¹ paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to per-

¹ So in original. Probably should not be capitalized.

formers, including announcers, on radio and television programs;

(4) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees;

(5) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days;

(7) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to such employee under subsection (a),² where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; or

(8) any value or income derived from employer-provided grants or rights provided pursuant to a stock option, stock appreciation right, or bona fide employee stock purchase program which is not otherwise excludable under any of paragraphs (1) through (7) if—

(A) grants are made pursuant to a program, the terms and conditions of which are communicated to participating employees either at the beginning of the employee's participation in the program or at the time of the grant;

(B) in the case of stock options and stock appreciation rights, the grant or right cannot be exercisable for a period of at least 6 months after the time of grant (except that grants or rights may become exercisable because of an employee's death, disability, retirement, or a change in corporate ownership, or other circumstances permitted by regulation), and the exercise price is at least 85 percent of the fair market value of the stock at the time of grant;

(C) exercise of any grant or right is voluntary; and

(D) any determinations regarding the award of, and the amount of, employer-provided grants or rights that are based on performance are—

(i) made based upon meeting previously established performance criteria (which

may include hours of work, efficiency, or productivity) of any business unit consisting of at least 10 employees or of a facility, except that, any determinations may be based on length of service or minimum schedule of hours or days of work; or

(ii) made based upon the past performance (which may include any criteria) of one or more employees in a given period so long as the determination is in the sole discretion of the employer and not pursuant to any prior contract.

(f) Employment necessitating irregular hours of work

No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (a) or (b) of section 206 of this title (whichever may be applicable) and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(g) Employment at piece rates

No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection—

(1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (i) the employee's average hourly earnings for the workweek exclusive of payments de-

²So in original. The comma probably should be preceded by a closing parenthesis.

scribed in paragraphs (1) through (7) of subsection (e) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(h) Credit toward minimum wage or overtime compensation of amounts excluded from regular rate

(1) Except as provided in paragraph (2), sums excluded from the regular rate pursuant to subsection (e) shall not be creditable toward wages required under section 206 of this title or overtime compensation required under this section.

(2) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) shall be creditable toward overtime compensation payable pursuant to this section.

(i) Employment by retail or service establishment

No employer shall be deemed to have violated subsection (a) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 206 of this title, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(j) Employment in hospital or establishment engaged in care of sick, aged, or mentally ill

No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated subsection (a) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(k) Employment by public agency engaged in fire protection or law enforcement activities

No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed the lesser of (A) 216

hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or

(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(l) Employment in domestic service in one or more households

No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a).

(m) Employment in tobacco industry

For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer—

(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying, packing, and storing of such tobacco,

(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Agriculture), or

(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is 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.

An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.

(n) Employment by street, suburban, or interurban electric railway, or local trolley or motorbus carrier

In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment.

(o) Compensatory time

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only—

(A) pursuant to—

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 240 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 240 hours, as the case may be, of compensatory time off shall, for

additional overtime hours of work, be paid overtime compensation.

(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than—

(A) the average regular rate received by such employee during the last 3 years of the employee's employment, or

(B) the final regular rate received by such employee,

whichever is higher³

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time,

shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(6) The hours an employee of a public agency performs court reporting transcript preparation duties shall not be considered as hours worked for the purposes of subsection (a) if—

(A) such employee is paid at a per-page rate which is not less than—

(i) the maximum rate established by State law or local ordinance for the jurisdiction of such public agency,

(ii) the maximum rate otherwise established by a judicial or administrative officer and in effect on July 1, 1995, or

(iii) the rate freely negotiated between the employee and the party requesting the transcript, other than the judge who presided over the proceedings being transcribed, and

(B) the hours spent performing such duties are outside of the hours such employee performs other work (including hours for which the agency requires the employee's attendance) pursuant to the employment relationship with such public agency.

For purposes of this section, the amount paid such employee in accordance with subparagraph (A) for the performance of court reporting transcript preparation duties, shall not be considered in the calculation of the regular rate at which such employee is employed.

(7) For purposes of this subsection—

(A) the term "overtime compensation" means the compensation required by subsection (a), and

(B) the terms "compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the appli-

³ So in original. Probably should be followed by a period.

cable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(p) Special detail work for fire protection and law enforcement employees; occasional or sporadic employment; substitution

(1) If an individual who is employed by a State, political subdivision of a State, or an interstate governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual's option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency—

(A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

(B) facilitates the employment of such employees by a separate and independent employer, or

(C) otherwise affects the condition of employment of such employees by a separate and independent employer.

(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(3) If an individual who is employed in any capacity by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same capacity, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.

(q) Maximum hour exemption for employees receiving remedial education

Any employer may employ any employee for a period or periods of not more than 10 hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (a) without paying the compensation for overtime employment prescribed in such subsection, if during such period or periods the employee is receiving remedial education that is—

(1) provided to employees who lack a high school diploma or educational attainment at the eighth grade level;

(2) designed to provide reading and other basic skills at an eighth grade level or below; and

(3) does not include job specific training.

(r) Reasonable break time for nursing mothers

(1) An employer shall provide—

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

(B) 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.

(2) An employer shall not be required to compensate an employee receiving reasonable break time under paragraph (1) for any work time spent for such purpose.

(3) An employer that employs less than 50 employees shall not be subject to the requirements of this subsection, 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.

(4) Nothing in this subsection shall preempt a State law that provides greater protections to employees than the protections provided for under this subsection.

(June 25, 1938, ch. 676, § 7, 52 Stat. 1063; Oct. 29, 1941, ch. 461, 55 Stat. 756; July 20, 1949, ch. 352, § 1, 63 Stat. 446; Oct. 26, 1949, ch. 736, § 7, 63 Stat. 912; Pub. L. 87-30, § 6, May 5, 1961, 75 Stat. 69; Pub. L. 89-601, title II, §§ 204(c), (d), 212(b), title IV, §§ 401-403, Sept. 23, 1966, 80 Stat. 835-837, 841, 842; Pub. L. 93-259, §§ 6(c)(1), 7(b)(2), 9(a), 12(b), 19, 21(a), Apr. 8, 1974, 88 Stat. 60, 62, 64, 66, 68; Pub. L. 99-150, §§ 2(a), 3(a)-(c)(1), Nov. 13, 1985, 99 Stat. 787, 789; Pub. L. 101-157, § 7, Nov. 17, 1989, 103 Stat. 944; Pub. L. 104-26, § 2, Sept. 6, 1995, 109 Stat. 264; Pub. L. 106-202, § 2(a), (b), May 18, 2000, 114 Stat. 308, 309; Pub. L. 111-148, title IV, § 4207, Mar. 23, 2010, 124 Stat. 577.)

REFERENCES IN TEXT

The Fair Labor Standards Amendments of 1966, referred to in subsec. (a)(2), is Pub. L. 89-601, Sept. 23, 1966, 80 Stat. 830. For complete classification of this Act to the Code, see Short Title of 1966 Amendment note set out under section 201 of this title and Tables.

The effective date of the Fair Labor Standards Amendments of 1966, referred to in subsec. (a)(2)(A), means the effective date of Pub. L. 89-601, which is Feb. 1, 1967 except as otherwise provided, see section 602 of Pub. L. 89-601, set out as an Effective Date of 1966 Amendment note under section 203 of this title.

Section 6(c)(3) of the Fair Labor Standards Amendments of 1974, referred to in subsec. (k)(1), is Pub. L. 93-259, § 6(c)(3), Apr. 8, 1974, 88 Stat. 61, which is set out as a note under section 213 of this title.

AMENDMENTS

2010—Subsec. (r). Pub. L. 111-148 added subsec. (r).

2000—Subsec. (e)(8). Pub. L. 106-202, § 2(a), added par. (8).

Subsec. (h). Pub. L. 106-202, § 2(b), designated existing provisions as par. (2) and added par. (1).

1995—Subsec. (o)(6), (7). Pub. L. 104-26 added par. (6) and redesignated former par. (6) as (7).

1989—Subsec. (q). Pub. L. 101-157 added subsec. (q).

1985—Subsec. (o). Pub. L. 99-150, §2(a), added subsec. (o).

Subsec. (p). Pub. L. 99-150, §3(a)–(c)(1), added subsec. (p).

1974—Subsec. (c). Pub. L. 93-259, §19(a), (b), substituted “seven workweeks” for “ten workweeks”, “ten workweeks” for “fourteen workweeks” and “forty-eight hours” for “fifty hours” effective May 1, 1974. Pub. L. 93-259, §19(c), substituted “five workweeks” for “seven workweeks” and “seven workweeks” for “ten workweeks” effective Jan. 1, 1975. Pub. L. 93-259, §19(d), substituted “three workweeks” for “five workweeks” and “five workweeks” for “seven workweeks” effective Jan. 1, 1976. Pub. L. 93-259, §19(e), repealed subsec. (c) effective Dec. 31, 1976.

Subsec. (d). Pub. L. 93-259, §19(a), (b), substituted “seven workweeks” for “ten workweeks”, “ten workweeks” for “fourteen workweeks” and “forty-eight hours” for “fifty hours” effective May 1, 1974. Pub. L. 93-259, §19(c), substituted “five workweeks” for “seven workweeks” and “seven workweeks” for “ten workweeks” effective Jan. 1, 1975. Pub. L. 93-259, §19(d), substituted “three workweeks” for “five workweeks” and “five workweeks” for “seven workweeks” effective Jan. 1, 1976. Pub. L. 93-259, §19(e), repealed subsec. (d) effective Dec. 31, 1976.

Subsec. (j). Pub. L. 93-259, §12(b), extended provision excepting from being considered a subsec. (a) violation agreements or undertakings between employers and employees respecting consecutive work period and overtime compensation to agreements between employers engaged in operation of an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises and employees respecting consecutive work period and overtime compensation.

Subsec. (k). Pub. L. 93-259, §6(c)(1)(D), effective Jan. 1, 1978, substituted in par. (1) “exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975” for “exceed 216 hours” and inserted in par. (2) “(or if lower, the number of hours referred to in clause (B) of paragraph (1))”.

Pub. L. 93-259, §6(c)(1)(C), substituted “216 hours” for “232 hours”, wherever appearing, effective Jan. 1, 1977.

Pub. L. 93-259, §6(c)(1)(B), substituted “232 hours” for “240 hours”, wherever appearing, effective Jan. 1, 1976.

Pub. L. 93-259, §6(c)(1)(A), added subsec. (k), effective Jan. 1, 1975.

Subsec. (l). Pub. L. 93-259, §7(b)(2), added subsec. (l).

Subsec. (m). Pub. L. 93-259, §9(a), added subsec. (m).

Subsec. (n). Pub. L. 93-259, §21(a), added subsec. (n).

1966—Subsec. (a). Pub. L. 89-601, §401, retained provision for 40-hour workweek and compensation for employment in excess of 40 hours at not less than one and one-half times the regular rate of pay and substituted provisions setting out a phased timetable for the workweek in the case of employees covered by the overtime provisions for the first time under the Fair Labor Standards Amendments of 1966 beginning at 44 hours during the first year from the effective date of the Fair Labor Standards Amendments of 1966, 42 hours during the second year from such date, and 40 hours after the expiration of the second year from such date, for provisions giving a phased timetable for workweeks in the case of employees first covered under the provisions of the Fair Labor Standards Amendments of 1961.

Subsec. (b)(3). Pub. L. 89-601, §212(b), substituted provisions granting an overtime exemption for petroleum distribution employees if they receive compensation for the hours of employment in excess of 40 hours in any workweek at a rate not less than one and one-half times the applicable minimum wage rate and if the enterprises do an annual gross sales volume of less than \$1,000,000, if more than 75 per centum of such enterprise’s annual dollar volume of sales is made within the

state in which the enterprise is located, and not more than 25 per centum of the annual dollar volume is to customers who are engaged in the bulk distribution of such products for resale for provisions covering employees for a period of not more than 14 workweeks in the aggregate in any calendar year in an industry found to be of a seasonal nature.

Subsec. (c). Pub. L. 89-601, §204(c), substituted provisions for an overtime exemption of 10 weeks in any calendar year or 14 weeks in the case of an employer not qualifying for the exemption in subsec. (d) of this section, limited to 10 hours a day and 50 hours a week, applicable to employees employed in seasonal industries which are not engaged in agricultural processing, for provisions granting a year-round unlimited exemption applicable to employees of employers engaged in first processing of milk into dairy products, cotton compressing and ginning, cottonseed processing, and the processing of certain farm products into sugar, and granting a 14-week unlimited exemption applicable to employees of employers engaged in first processing of perishable or seasonal fresh fruits or vegetables first processing within the area of production of any agricultural commodity during a seasonal operation, or the handling or slaughtering of livestock and poultry.

Subsec. (d). Pub. L. 89-601, §204(c), added subsec. (d). Former subsec. (d) redesignated (e).

Subsecs. (e), (f). Pub. L. 89-601, §204(d)(1), redesignated former subsecs. (d) and (e) as (e) and (f) respectively. Former subsec. (f) redesignated (g).

Subsecs. (g), (h). Pub. L. 89-601, §204(d)(1), (2), redesignated former subsecs. (f) and (g) as subsecs. (g) and (h) respectively, and in subsecs. (g) and (h) as so redesignated, substituted reference to “subsection (e)” for reference to “subsection (d).” Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 89-601, §§204(d)(1), 402, redesignated former subsec. (h) as (i) and inserted provision that, in determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

Subsec. (j). Pub. L. 89-601, §403, added subsec. (j).

1961—Subsec. (a). Pub. L. 87-30, §6(a), designated existing provisions as par. (1), inserted “in any workweek”, and added par. (2).

Subsec. (b)(2). Pub. L. 87-30, §6(b), substituted “in excess of the maximum workweek applicable to such employee under subsection (a)” for “in excess of forty hours in the workweek”.

Subsec. (d)(5), (7). Pub. L. 87-30, §6(c), (d), substituted “in excess of the maximum workweek applicable to such employee under subsection (a)” for “forty in a workweek” in par. (5) and “the maximum workweek applicable to such employee under subsection (a)” for “forty hours” in par. (7).

Subsec. (e). Pub. L. 87-30, §6(e), substituted “the maximum workweek applicable to such employee under subsection (a)”, “subsection (a) or (b) of section 206 of this title (whichever may be applicable” and “such maximum” for “forty hours”, “section 206(a) of this title” and “forty in any”, respectively.

Subsec. (f). Pub. L. 87-30, §6(f), substituted “the maximum workweek applicable to such employee under subsection” for “forty hours” in two places.

Subsec. (h). Pub. L. 87-30, §6(g), added subsec. (h).

1949—Subsec. (a). Act Oct. 26, 1949, continued requirement that employment in excess of 40 hours in a workweek be compensated at rate not less than 1½ times regular rate except as to employees specifically exempted.

Subsec. (b)(1). Act Oct. 26, 1949, increased employment period limitation from one thousand hours to one thousand and forty hours in semi-annual agreements.

Subsec. (b)(2). Act Oct. 26, 1949, increased employment period limitation from two thousand and eighty hours to two thousand two hundred and forty hours in annual agreements, fixed minimum and maximum

guaranteed employment periods, and provided for overtime rate for hours worked in excess of the guaranty.

Subsec. (c). Act Oct. 26, 1949, added buttermilk to commodities listed for first processing.

Subsec. (d). Act Oct. 26, 1949, struck out former subsec. (d) and inserted a new subsec. (d) defining regular rate with certain specified types of payments excepted.

Subsec. (e) added by act July 20, 1949, and amended by act Oct. 26, 1949, which determined compensation to be paid for irregular hours of work.

Subsecs. (f) and (g). Act Oct. 26, 1949, added subsecs. (f) and (g).

1941—Subsec. (b)(2) amended by act Oct. 29, 1941.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-202, §2(c), May 18, 2000, 114 Stat. 309, provided that: "The amendments made by this section [amending this section] shall take effect on the date that is 90 days after the date of enactment of this Act [May 18, 2000]."

EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104-26, §3, Sept. 6, 1995, 109 Stat. 265, provided that: "The amendments made by section 2 [amending this section] shall apply after the date of the enactment of this Act [Sept. 6, 1995] and with respect to actions brought in a court after the date of the enactment of this Act."

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-150 effective Apr. 15, 1986, see section 6 of Pub. L. 99-150, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-259, §6(c)(1)(A)-(D), Apr. 8, 1974, 88 Stat. 60, provided that the amendments made by that section are effective Jan. 1, 1975, 1976, 1977, and 1978, respectively.

Amendment by sections 7(b)(2), 9(a), 12(b), 19(a), (b), and 21(a) of 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.

Pub. L. 93-259, §19(c)-(e), Apr. 8, 1974, 88 Stat. 66, provided that the amendments and repeals made by subsecs. (c), (d), and (e) of section 19 are effective Jan. 1, 1975, Jan. 1, 1976, and Dec. 31, 1976, respectively.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-601 effective Feb. 1, 1967, except as otherwise provided, see section 602 of Pub. L. 89-601, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87-30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87-30, set out as a note under section 203 of this title.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

REGULATIONS

Pub. L. 106-202, §2(e), May 18, 2000, 114 Stat. 309, provided that: "The Secretary of Labor may promulgate such regulations as may be necessary to carry out the amendments made by this Act [amending this section]."

TRANSFER OF FUNCTIONS

Functions of all other officers of Department of Labor and functions of all agencies and employees of that Department, with exception of functions vested by Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners em-

ployed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

APPLICABILITY; LIABILITY OF EMPLOYERS

Pub. L. 110-244, title III, §306, June 6, 2008, 122 Stat. 1620, provided that:

"(a) APPLICABILITY FOLLOWING THIS ACT.—Beginning on the date of enactment of this Act [June 6, 2008], section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) shall apply to a covered employee notwithstanding section 13(b)(1) of that Act (29 U.S.C. 213(b)(1))."

"(b) LIABILITY LIMITATION FOLLOWING SAFETEA-LU.—

"(1) LIMITATION ON LIABILITY.—An employer shall not be liable for a violation of section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) with respect to a covered employee if—

"(A) the violation occurred in the 1-year period beginning on August 10, 2005; and

"(B) as of the date of the violation, the employer did not have actual knowledge that the employer was subject to the requirements of such section with respect to the covered employee.

"(2) ACTIONS TO RECOVER AMOUNTS PREVIOUSLY PAID.—Nothing in paragraph (1) shall be construed to establish a cause of action for an employer to recover amounts paid before the date of enactment of this Act [June 6, 2008] in settlement of, in compromise of, or pursuant to a judgment rendered regarding a claim or potential claim based on an alleged or proven violation of section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) occurring in the 1-year period referred to in paragraph (1)(A) with respect to a covered employee.

"(c) COVERED EMPLOYEE DEFINED.—In this section, the term 'covered employee' means an individual—

"(1) who is employed by a motor carrier or motor private carrier (as such terms are defined by section 13102 of title 49, United States Code, as amended by section 305);

"(2) whose work, in whole or in part, is defined—

"(A) as that of a driver, driver's helper, loader, or mechanic; and

"(B) as affecting the safety of operation of motor vehicles weighing 10,000 pounds or less in transportation on public highways in interstate or foreign commerce, except vehicles—

"(i) designed or used to transport more than 8 passengers (including the driver) for compensation;

"(ii) designed or used to transport more than 15 passengers (including the driver) and not used to transport passengers for compensation; or

"(iii) used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of title 49, United States Code, and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103 of title 49, United States Code; and

"(3) who performs duties on motor vehicles weighing 10,000 pounds or less."

LIABILITY OF EMPLOYERS

Pub. L. 106-202, §2(d), May 18, 2000, 114 Stat. 309, provided that: "No employer shall be liable under the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.] for any failure to include in an employee's regular rate (as defined for purposes of such Act) any income or value derived from employer-provided grants or rights obtained pursuant to any stock option, stock appreciation right, or employee stock purchase program if—

"(1) the grants or rights were obtained before the effective date described in subsection (c) [set out as an Effective Date of 2000 Amendment note above];

“(2) the grants or rights were obtained within the 12-month period beginning on the effective date described in subsection (c), so long as such program was in existence on the date of enactment of this Act [May 18, 2000] and will require shareholder approval to modify such program to comply with section 7(e)(8) of the Fair Labor Standards Act of 1938 [29 U.S.C. 207(e)(8)] (as added by the amendments made by subsection (a)); or

“(3) such program is provided under a collective bargaining agreement that is in effect on the effective date described in subsection (c).”

COMPENSATORY TIME; COLLECTIVE BARGAINING AGREEMENTS IN EFFECT ON APRIL 15, 1986

Pub. L. 99-150, §2(b), Nov. 13, 1985, 99 Stat. 788, provided that: “A collective bargaining agreement which is in effect on April 15, 1986, and which permits compensatory time off in lieu of overtime compensation shall remain in effect until its expiration date unless otherwise modified, except that compensatory time shall be provided after April 14, 1986, in accordance with section 7(o) of the Fair Labor Standards Act of 1938 (as added by subsection (a)) [29 U.S.C. 207(o)].”

DEFERMENT OF MONETARY OVERTIME COMPENSATION

Pub. L. 99-150, §2(c)(2), Nov. 13, 1985, 99 Stat. 789, provided that: “A State, political subdivision of a State, or interstate governmental agency may defer until August 1, 1986, the payment of monetary overtime compensation under section 7 of the Fair Labor Standards Act of 1938 [29 U.S.C. 207] for hours worked after April 14, 1986.”

EFFECT OF AMENDMENTS BY PUBLIC LAW 99-150 ON PUBLIC AGENCY LIABILITY RESPECTING ANY EMPLOYEE COVERED UNDER SPECIAL ENFORCEMENT POLICY

Amendment by Pub. L. 99-150 not to affect liability of certain public agencies under section 216 of this title for violation of this section occurring before Apr. 15, 1986, see section 7 of Pub. L. 99-150, set out as a note under section 216 of this title.

RULES, REGULATIONS, AND ORDERS PROMULGATED WITH REGARD TO 1966 AMENDMENTS

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89-601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89-601, see section 602 of Pub. L. 89-601, set out as a note under section 203 of this title.

STUDY BY SECRETARY OF LABOR OF EXCESSIVE OVERTIME

Pub. L. 89-601, title VI, §603, Sept. 23, 1966, 80 Stat. 844, directed Secretary of Labor to make a complete study of practices dealing with overtime payments for work in excess of forty hours per week and the extent to which such overtime work impeded the creation of new job opportunities in American industry and instructed him to report to the Congress by July 1, 1967, the findings of such survey with appropriate recommendations.

EX. ORD. NO. 9607. FORTY-EIGHT HOUR WARTIME WORKWEEK

Ex. Ord. No. 9607, Aug. 30, 1945, 10 F.R. 11191, provided: By virtue of the authority vested in me by the Constitution and statutes as President of the United States it is ordered that Executive Order 9301 of February 9, 1943 [8 F.R. 1825] (formerly set out as note under this section), establishing a minimum wartime workweek of forty-eight hours, be, and it is hereby, revoked.

HARRY S. TRUMAN.

DEFINITION OF “ADMINISTRATOR”

The term “Administrator” as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

§ 208. Repealed. Pub. L. 110-28, title VIII, § 8103(c)(1)(A), May 25, 2007, 121 Stat. 189

Section, acts June 25, 1938, ch. 676, §8, 52 Stat. 1064; Oct. 26, 1949, ch. 736, §8, 63 Stat. 915; Aug. 12, 1955, ch. 867, §§4, 5(b)-(e), 69 Stat. 711, 712; Pub. L. 85-750, Aug. 25, 1958, 72 Stat. 844; Pub. L. 87-30, §7, May 5, 1961, 75 Stat. 70; Pub. L. 93-259, §5(c)(1), (d), Apr. 8, 1974, 88 Stat. 58; Pub. L. 95-151, §2(d)(3), Nov. 1, 1977, 91 Stat. 1246; Pub. L. 101-157, §4(c), Nov. 17, 1989, 103 Stat. 940; Pub. L. 101-583, §1, Nov. 15, 1990, 104 Stat. 2871, related to wage orders in American Samoa.

EFFECTIVE DATE OF REPEAL

Repeal effective 60 days after May 25, 2007, see section 8103(c)(2) of Pub. L. 110-28, set out as an Effective Date of 2007 Amendment note under section 206 of this title.

§ 209. Attendance of witnesses

For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Administrator, the Secretary of Labor, and the industry committees.

(June 25, 1938, ch. 676, §9, 52 Stat. 1065; 1946 Reorg. Plan No. 2, §1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095.)

TRANSFER OF FUNCTIONS

Functions relating to enforcement and administration of equal pay provisions vested by this section in Secretary of Labor and 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.

Functions of all other officers of Department of Labor and functions of all agencies and employees of that Department, with exception of functions vested by Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

“Secretary of Labor” substituted in text for “Chief of the Children’s Bureau” by 1946 Reorg. Plan No. 2. See Transfer of Functions note set out under section 203 of this title.

DEFINITION OF “ADMINISTRATOR”

The term “Administrator” as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

§ 210. Court review of wage orders in Puerto Rico and the Virgin Islands

(a) Any person aggrieved by an order of the Secretary issued under section 208¹ of this title may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in

¹ See References in Text note below.