

of Pub. L. 89-601, set out as a note under section 203 of this title.

**§ 256. Determination of commencement of future actions**

In determining when an action is commenced for the purposes of section 255 of this title, an action commenced on or after May 14, 1947 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> shall be considered to be commenced on the date when the complaint is filed; except that in the case of a collective or class action instituted under the Fair Labor Standards Act of 1938, as amended, or the Bacon-Davis Act,<sup>1</sup> it shall be considered to be commenced in the case of any individual claimant—

- (a) on the date when the complaint is filed, if he is specifically named as a party plaintiff in the complaint and his written consent to become a party plaintiff is filed on such date in the court in which the action is brought; or
- (b) if such written consent was not so filed or if his name did not so appear—on the subsequent date on which such written consent is filed in the court in which the action was commenced.

(May 14, 1947, ch. 52, § 7, 61 Stat. 88.)

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.

**§ 257. Pending collective and representative actions**

The statute of limitations prescribed in section 255(b) of this title shall also be applicable (in the case of a collective or representative action commenced prior to May 14, 1947 under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.]) to an individual claimant who has not been specifically named as a party plaintiff to the action prior to the expiration of one hundred and twenty days after May 14, 1947. In the application of such statute of limitations such action shall be considered to have been commenced as to him when, and only when, his written consent to become a party plaintiff to the action is filed in the court in which the action was brought.

(May 14, 1947, ch. 52, § 8, 61 Stat. 88.)

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.

**§ 258. Reliance on past administrative rulings, etc.**

In any action or proceeding commenced prior to or on or after May 14, 1947 based on any act

or omission prior to 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 administrative regulation, order, ruling, approval, or interpretation, of any agency of the United States, or any administrative practice or enforcement policy of any 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.

(May 14, 1947, ch. 52, § 9, 61 Stat. 88.)

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.

**§ 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) 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 uti-

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

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lized 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.

### § 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 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 “Walsh-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.

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

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