

which transferred functions of Children's Bureau and its Chief under sections 201 to 216 and 217 to 219 of this title to Secretary of Labor to be performed under his direction and control by such officers and employees of Department of Labor as he designates.

#### **§ 204. Administration**

##### **(a) Creation of Wage and Hour Division in Department of Labor; Administrator**

There is created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator, to be known as the Administrator of the Wage and Hour Division (in this chapter referred to as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate.

##### **(b) Appointment, selection, classification, and promotion of employees by Administrator**

The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this chapter and shall fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5. The Administrator may establish and utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. In the appointment, selection, classification, and promotion of officers and employees of the Administrator, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

##### **(c) Principal office of Administrator; jurisdiction**

The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all of his powers in any place.

##### **(d) Biennial report to Congress; studies of exemptions to hour and wage provisions and means to prevent curtailment of employment opportunities**

(1) The Secretary shall submit biennially in January a report to the Congress covering his activities for the preceding two years and including such information, data, and recommendations for further legislation in connection with the matters covered by this chapter as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages and overtime coverage established by this chapter, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent. Such report shall also include a summary of the special certificates issued under section 214(b) of this title.

(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 213 of this title, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

(3) The Secretary shall conduct a continuing study on means to prevent curtailment of employment opportunities for manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). The first report of the results of such study shall be transmitted to the Congress not later than one year after the effective date of the Fair Labor Standards Amendments of 1974. Subsequent reports on such study shall be transmitted to the Congress at two-year intervals after such effective date. Each such report shall include suggestions respecting the Secretary's authority under section 214 of this title.

##### **(e) Study of effects of foreign production on unemployment; report to President and Congress**

Whenever the Secretary has reason to believe that in any industry under this chapter the competition of foreign producers in United States markets or in markets abroad, or both, has resulted, or is likely to result, in increased unemployment in the United States, he shall undertake an investigation to gain full information with respect to the matter. If he determines such increased unemployment has in fact resulted, or is in fact likely to result, from such competition, he shall make a full and complete report of his findings and determinations to the President and to the Congress: *Provided*, That he may also include in such report information on the increased employment resulting from additional exports in any industry under this chapter as he may determine to be pertinent to such report.

##### **(f) Employees of Library of Congress; administration of provisions by Office of Personnel Management**

The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to individuals employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this chapter with respect to such individuals. Notwithstanding any other provision of this chapter, or any other law, the Director of the Office of Personnel Management is authorized to administer the provisions of this chapter with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Regulatory Commission, or the Tennessee Valley Authority). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation,

and liquidated damages under section 216(b) of this title.

(June 25, 1938, ch. 676, § 4, 52 Stat. 1061; Oct. 26, 1949, ch. 736, § 4, 63 Stat. 911; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Aug. 12, 1955, ch. 867, § 2, 69 Stat. 711; Pub. L. 87-30, § 3, May 5, 1961, 75 Stat. 66; Pub. L. 93-259, §§ 6(b), 24(c), 27, Apr. 8, 1974, 88 Stat. 60, 72, 73; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 104-66, title I, § 1102(a), Dec. 21, 1995, 109 Stat. 722; Pub. L. 109-435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242.)

### Editorial Notes

#### REFERENCES IN TEXT

The effective date of the Fair Labor Standards Amendments of 1974, referred to in subsec. (d)(3), is the effective date of Pub. L. 93-259, which is May 1, 1974, except as otherwise specifically provided, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

#### CODIFICATION

In subsec. (a), provisions that prescribed the compensation of the Administrator were omitted to conform to the provisions of the Executive Schedule. See section 5316 of Title 5, Government Organization and Employees.

In subsec. (b), “chapter 51 and subchapter III of chapter 53 of title 5” substituted for “the Classification Act of 1949, as amended” on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

#### AMENDMENTS

2006—Subsec. (f), Pub. L. 109-435 substituted “Postal Regulatory Commission” for “Postal Rate Commission”.

1995—Subsec. (d)(1), Pub. L. 104-66 in first sentence substituted “biennially” and “preceding two years” for “annually” and “preceding year”, respectively.

1974—Subsec. (d)(1), Pub. L. 93-259, §§ 24(c), 27(1), (2), inserted provision at end of subsec. (d) requiring the report to Congress to include a summary of the special certificates issued under section 214(b) of this title, designated subsec. (d) provisions as subsec. (d)(1), and required the report to contain an evaluation and appraisal of overtime coverage established by this chapter, respectively.

Subsec. (d)(2), (3), Pub. L. 93-259, § 27(3), added pars. (2) and (3).

Subsec. (f), Pub. L. 93-259, § 6(b), added subsec. (f).

1961—Subsec. (e), Pub. L. 87-30 added subsec. (e).

1955—Subsec. (d), Act Aug. 12, 1955, required an evaluation and appraisal by the Secretary of the minimum wages, together with his recommendations to Congress, to be included in the annual report.

1949—Subsec. (b), Act Oct. 28, 1949, substituted “Classification Act of 1949” for “Classification Act of 1923”.

Subsec. (a), Act Oct. 26, 1949, increased compensation of Administrator to \$15,000.

### Statutory Notes and Related Subsidiaries

#### 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.

#### 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 Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

#### REPEALS

Acts Oct. 26, 1949, ch. 736, § 4, 63 Stat. 911, and Oct. 28, 1949, ch. 782, cited as a credit to this section, were repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

#### TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which reports required under paragraphs (1) and (3) of subsec. (d) of this section are listed on page 124), see section 3003 of Pub. L. 104-66, set out as a note under section 1113 of Title 31, Money and Finance.

#### MINIMUM WAGE STUDY COMMISSION; ESTABLISHMENT, PURPOSES, COMPOSITION, ETC.

Pub. L. 95-151, § 2(e), Nov. 1, 1977, 91 Stat. 1246, provided for the establishment, purposes, composition, etc., of the Minimum Wage Study Commission, the submission of reports, with the latest report being submitted to the President and Congress thirty six months after the date of the appointment of the members of the Commission and such appointments being made within 180 days after Nov. 1, 1977, and the Commission to cease to exist thirty days after submission of the report.

#### DEFINITION OF “SECRETARY”

Act Aug. 12, 1955, ch. 867, § 6, 69 Stat. 712, provided that: “The term ‘Secretary’ as used in this Act and in amendments made by this Act [amending this section and sections 205, 206, 208, and 210 of this title] means the Secretary of Labor.”

### Executive Documents

#### TRANSFER OF FUNCTIONS

Functions relating to enforcement and administration of equal pay provisions vested by subsecs. (d)(1) and (f) in Secretary of Labor and Civil Service Commission 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.

“Director of the Office of Personnel Management” substituted for “Civil Service Commission” in subsec. (f), pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

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.

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

Section, acts June 25, 1938, ch. 676, § 5, 52 Stat. 1062; June 26, 1940, ch. 432, § 3(c), 54 Stat. 615; Oct. 26, 1949, ch. 736, § 5, 63 Stat. 911; Aug. 12, 1955, ch. 867, § 5(a), 69 Stat. 711; Pub. L. 87-30, § 4, May 5, 1961, 75 Stat. 67; Pub. L. 93-259, § 5(a), Apr. 8, 1974, 88 Stat. 56; Pub. L. 101-157, § 4(a), Nov. 17, 1989, 103 Stat. 939, related to establishment of special industry committees for American Samoa to recommend the minimum rate or rates of wages. See section 8103 of Pub. L. 110-28, set out as a note under section 206 of this title.

**Statutory Notes and Related Subsidiaries**

**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.

**§ 206. Minimum wage**

**(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees**

Every employer shall pay to each 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, wages at the following rates:

(1) except as otherwise provided in this section, not less than—

(A) \$5.85 an hour, beginning on the 60th day after May 25, 2007;

(B) \$6.55 an hour, beginning 12 months after that 60th day; and

(C) \$7.25 an hour, beginning 24 months after that 60th day;

(2) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term “home worker”; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;

(3) if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

(4) if such employee is employed in agriculture, not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977.

**(b) Additional applicability to employees pursuant to subsequent amendatory provisions**

Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5)<sup>1</sup> applies) 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, and who in such workweek is brought within the purview of this section by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1).

**(c) Repealed. Pub. L. 104-188, [title II], § 2104(c), Aug. 20, 1996, 110 Stat. 1929**

**(d) Prohibition of sex discrimination**

(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee

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