

to enforce any liability or impose any punishment with respect to an activity which was not compensable under subsections (a) and (b) of this section.

**(e) Assignment of actions**

No cause of action based on 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.], the Walsh-Healey Act, or the Bacon-Davis Act,<sup>1</sup> which accrued prior to May 14, 1947, or any interest in such cause of action, shall hereafter be assignable, in whole or in part, to the extent that such cause of action is based on an activity which was not compensable within the meaning of subsections (a) and (b).

(May 14, 1947, ch. 52, § 2, 61 Stat. 85.)

**Editorial Notes**

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsecs. (a), (c) to (e), 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 subsecs. (a), (c) to (e), are defined for purposes of this chapter in section 262 of this title.

**§ 253. Compromise and waiver**

**(a) Compromise of certain existing claims under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, or the Bacon-Davis Act; limitations**

Any cause of action 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> which accrued prior to May 14, 1947, or any action (whether instituted prior to or on or after May 14, 1947) to enforce such a cause of action, may hereafter be compromised in whole or in part, if there exists a bona fide dispute as to the amount payable by the employer to his employee; except that no such action or cause of action may be so compromised to the extent that such compromise is based on an hourly wage rate less than the minimum required under such Act, or on a payment for overtime at a rate less than one and one-half times such minimum hourly wage rate.

**(b) Waiver of liquidated damages under Fair Labor Standards Act of 1938**

Any employee may hereafter waive his right under the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], to liquidated damages, in whole or in part, with respect to activities engaged in prior to May 14, 1947.

**(c) Satisfaction**

Any such compromise or waiver, in the absence of fraud or duress, shall, according to the terms thereof, be a complete satisfaction of such cause of action and a complete bar to any action based on such cause of action.

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

**(d) Retroactive effect of section**

The provisions of this section shall also be applicable to any compromise or waiver heretofore so made or given.

**(e) "Compromise" defined**

As used in this section, the term "compromise" includes "adjustment", "settlement", and "release".

(May 14, 1947, ch. 52, § 3, 61 Stat. 86.)

**Editorial Notes**

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsecs. (a) and (b), 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 subsec. (a), are defined for purposes of this chapter in section 262 of this title.

**§ 254. Relief from liability and punishment under the Fair Labor Standards Act of 1938, the Walsh-Healey Act, and the Bacon-Davis Act for failure to pay minimum wage or overtime compensation**

**(a) Activities not compensable**

Except as provided in subsection (b), 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.], the Walsh-Healey Act, or the Bacon-Davis Act,<sup>1</sup> 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 any of the following activities of such employee engaged in on or after May 14, 1947—

(1) walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform, and

(2) activities which are preliminary to or postliminary to said principal activity or activities,

which occur either prior to the time on any particular workday at which such employee commences, or subsequent to the time on any particular workday at which he ceases, such principal activity or activities. For purposes of this subsection, the use of an employer's vehicle for travel by an employee and activities performed by an employee which are incidental to the use of such vehicle for commuting shall not be considered part of the employee's principal activities if the use of such vehicle for travel is within the normal commuting area for the employer's business or establishment and the use of the employer's vehicle is subject to an agreement on the part of the employer and the employee or representative of such employee.

**(b) Compensability by contract or custom**

Notwithstanding the provisions of subsection (a) which relieve an employer from liability and punishment with respect to any activity, the employer shall not be so relieved if such activity is compensable by either—

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

(1) an express provision of a written or non-written contract in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee is employed, covering such activity, not inconsistent with a written or nonwritten contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.

**(c) Restriction on activities compensable under contract or custom**

For the purposes of subsection (b), an activity shall be considered as compensable under such contract provision or such custom or practice only when it is engaged in during the portion of the day with respect to which it is so made compensable.

**(d) Determination of time employed with respect to activities**

In the application of the minimum wage and overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201 et seq.], of the Walsh-Healey Act, or of the Bacon-Davis Act,<sup>1</sup> in determining the time for which an employer employs an employee with respect to walking, riding, traveling, or other preliminary or postliminary activities described in subsection (a) of this section, there shall be counted all that time, but only that time, during which the employee engages in any such activity which is compensable within the meaning of subsections (b) and (c) of this section.

(May 14, 1947, ch. 52, §4, 61 Stat. 86; Pub. L. 104-188, [title II], §2102, Aug. 20, 1996, 110 Stat. 1928.)

**Editorial Notes**

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, as amended, referred to in subsecs. (a) and (d), 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 subsecs. (a) and (d), are defined for purposes of this chapter in section 262 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-188 in closing provisions inserted at end “For purposes of this subsection, the use of an employer’s vehicle for travel by an employee and activities performed by an employee which are incidental to the use of such vehicle for commuting shall not be considered part of the employee’s principal activities if the use of such vehicle for travel is within the normal commuting area for the employer’s business or establishment and the use of the employer’s vehicle is subject to an agreement on the part of the employer and the employee or representative of such employee.”

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, [title II], §2103, Aug. 20, 1996, 110 Stat. 1928, provided that: “The amendment made by section

2101 [probably means section 2102 of Pub. L. 104-188, amending this section] shall take effect on the date of the enactment of this Act [Aug. 20, 1996] and shall apply in determining the application of section 4 of the Portal-to-Portal Act of 1947 [this section] to an employee in any civil action brought before such date of enactment but pending on such date.”

**§ 255. Statute of limitations**

Any action commenced on or after May 14, 1947, to enforce any cause of action for 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.], the Walsh-Healey Act, or the Bacon-Davis Act<sup>1</sup>—

(a) if the cause of action accrues on or after May 14, 1947—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued, except that a cause of action arising out of a willful violation may be commenced within three years after the cause of action accrued;

(b) if the cause of action accrued prior to May 14, 1947—may be commenced within whichever of the following periods is the shorter: (1) two years after the cause of action accrued, or (2) the period prescribed by the applicable State statute of limitations; and, except as provided in paragraph (c), every such action shall be forever barred unless commenced within the shorter of such two periods;

(c) if the cause of action accrued prior to May 14, 1947, the action shall not be barred by paragraph (b) if it is commenced within one hundred and twenty days after May 14, 1947 unless at the time commenced it is barred by an applicable State statute of limitations;

(d) with respect to any cause of action brought under section 216(b) of this title against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.

(May 14, 1947, ch. 52, §6, 61 Stat. 87; Pub. L. 89-601, title VI, §601(b), Sept. 23, 1966, 80 Stat. 844; Pub. L. 93-259, §6(d)(2)(A), Apr. 8, 1974, 88 Stat. 61.)

**Editorial Notes**

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.

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