No. 15-56352

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIAN NEWTON,

Plaintiff-Appellant,

v.

PARKER DRILLING MANAGEMENT SERVICES, INC.

Defendant-Appellee

On Appeal from the United States District Court
Central District of California, No. 2:15-cv-02517-RGK-AGRx
The Honorable R. Gary Klausner

APPELLANT'S OPENING BRIEF

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I. STATEMENT OF JURISDICTION

Pursuant to Ninth Circuit Rule 28-2.2, Plaintiff-Appellant Brian Newton ("Newton") submits the following statement of jurisdiction:

a. The United States District Court for the Northern District of California (the "District Court") had subject matter jurisdiction over this action against Defendant-Appellee Parker Drilling Management Services, Inc. ("Parker") pursuant to 43 U.S.C. § 1349(b)(1)(A).

b. The District Court granted Parker's Motion for Judgment on the Pleadings on August 10, 2015. Excerpts of Record ("ER") 5. The District Court's judgment is final under Federal Rule of Civil Procedure 54 and this Court has jurisdiction pursuant to 28 U.S.C. § 1291.

c. Newton appeals from the District Court's order granting Parker's Motion for Judgment on the Pleadings. Newton's Notice of Appeal was filed on September 3, 2015. ER 1. This appeal is timely pursuant to 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1).

II. ISSUES PRESENTED

Whether the District Court erred by dismissing Newton's California law claims when: (1) at least some of the alleged California wage-and-hour violations took place on vessels to and from California's coast and on the coast of California itself; (2) the alleged state Labor Code violations occurring on oil platforms off of

California's coast are not inconsistent with any federal statutory provisions or with any regulations promulgated by the Secretary of Interior; (3) the express purpose of the corresponding federal statute (the Fair Labor Standards Act) is to establish a national floor under which wage protections cannot drop, not to establish absolute uniformity in minimum wage and overtime standards nationwide at levels, as evidenced by its "savings clause," enabling states to enact more favorable wage and hour legislation; and (4) applying California's wage-and-hour laws to workers on oil platforms off its coast would have a minimal impact on international and interstate commerce, thereby ensuring that the essential features of exclusive federal jurisdiction are not unduly burdened.[1]

III. REVIEWABILITY AND STANDARD OF REVIEW

This Court reviews de novo a district court's grant of a Federal Rule of Civil Procedure 12(c) motion for judgment on the pleadings. *United States ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1053 (9th Cir. 2011). The Court inquires whether the complaint at issue contains "sufficient factual matter, accepted as true, to state a claim of relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted); *Cafasso*, 637 F.3d at 1054 n. 4 (finding *Iqbal* applies to Rule 12(c) motions

[1] Attached at section XI herein (beginning at page 52) is an Addendum of Pertinent Constitutional Provisions and Statutes that contains all statutes, regulations, and constitutional provisions applicable to the within Appellant's Opening Brief.

because Rule 12(b)(6) and Rule 12(c) motions are functionally equivalent). The Court may find a claim plausible when a plaintiff pleads sufficient facts to allow the Court to draw a reasonable inference of misconduct, but the Court is not required "to accept as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678 (internal quotation marks and citation omitted). "Dismissal with prejudice and without leave to amend is not appropriate unless it is clear on de novo review that the complaint could not be saved by amendment." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (per curiam).

IV. STATEMENT OF THE CASE

In early 2015, Newton, a former California resident who worked 14-day "hitches" on an oil platform off of the coast of California, brought suit against Parker in state court on behalf of himself and all those similarly situated for various alleged violations of the California Labor Code. ER 41-52. Parker removed the action to the Central District of California under the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1356b (the "OCSLA"), which vests jurisdiction in federal courts over disputes arising out of, or in connection with, drilling operations conducted on the Outer Continental Shelf ("OCS"). 43 U.S.C. § 1349(b)(1)(A); ER 5.

Parker brought a Motion for Judgment on the Pleadings on the basis that Newton's California Labor Code claims did not apply on the oil platform on which

he worked, by operation of the OCSLA. ER 5, 7. Newton requested leave to amend should the District Court grant the motion. *See* Opposition to Motion for Judgment on the Pleadings or, Alternatively, Summary Judgment, CM/ECF Dkt. No. 16 at 20. The District Court indeed granted Parker's motion, thereby terminating the action, and without addressing the request to amend. ER 10. Newton now appeals the dismissal.

V. STATEMENT OF FACTS

A. Factual Background of Newton's Claims.

Newton was employed by Parker from approximately January 25, 2013 to approximately January 15, 2015. ER 27. Up until in or about November 2014, Newton was an individual residing in the County of Ventura, State of California, after which he became a resident of Harris County, Texas. ER 26.

Newton worked for Parker on an oil platform off of the California coastal waters in the Santa Barbara Channel. ER 26-27. His shift typically lasted 14 days. ER 27. He received pay for only 12 hours each day while on the oil platform. *Id.* He did not receive any compensation for 12 hours while on the platform each day. *Id.* He could not reasonably leave the platform during his 14-day shift. *Id.*

B. Procedural History.

On February 17, 2015, Newton filed his initial complaint against Parker in the Superior Court for the County of Santa Barbara. ER 41. Therein, Newton

alleged the following state law causes of action: (1) Minimum Wage Violations; (2) Paystub Violations; (3) Unfair Competition; (4) Failure to Timely Pay Final Wages; (5) Failure to Provide Lawful Meal Periods; and (6) Failure to Pay Overtime and Doubletime Premium Wages. ER 41-52. On March 23, 2015, Newton filed a First Amended Complaint that added a seventh cause of action for (7) Civil Penalties under the Private Attorneys General Act of 2004 ("PAGA"). ER 25, 36-40.

Each of Newton's claims arose under California law, including without limitation California Labor Code sections 201-202 (for the failure to timely pay final wages), 203 (for a penalty for the willful failure to timely pay final wages), 226 (for a penalty for defective paycheck stubs), 226.7 (for meal period premium wages), 510 (for overtime and doubletime premium wages), 512 (for denied meal periods), 1194 (for unpaid minimum wages), 1194.2 (for liquidated damages for the failure to pay minimum wages), and 2699 through 2699.5 (for civil penalties under PAGA for these same and other Labor Code violations) and California Business and Professions Code section 17200 (for restitution for unfair competition relating to Parker's alleged violations of the Labor Code). ER 25-40.

Newton brought his claims on his own behalf and on behalf of all persons similarly situated. ER 26. He sought to represent a class of "all hourly employees of Parker Drilling Management Services, Inc., who, at any time within four years

from the date of filing of this lawsuit, worked on oil platforms off of the California coast for periods of 24 hours or more." *Id.* Newton alleged that Parker failed to pay wages to himself and the putative class for 12 hours each workday, including for time spent sleeping, in violation of California law, citing *Mendiola v. CPS Security Solutions, Inc.*, 60 Cal. 4th 833, 848-49 (2015). ER 28, 35.

On April 3, 2015, Defendant filed its Answer to Plaintiff's First Amended Complaint in the Superior Court. ER 7. On April 6, 2015, Defendant removed the action to the U.S. District Court for the Central District pursuant to the OCSLA. ER 5.

On June 12, 2015, Parker brought its Motion for Judgment on the Pleadings. ER 55. At that time, by operation of Federal Rule of Civil Procedure 26(d)(1), discovery had been stayed and Newton had not yet been able to conduct any discovery. *Id.* (Rule 26(f) Scheduling Conference had been set for July 27, 2015). On June 29, 2015, Newton filed his opposition, wherein he requested to be allowed to amend his Complaint in the event the Court granted the motion. ER 56-57; *see* Opposition to Motion for Judgment on the Pleadings or, Alternatively, Summary Judgment, CM/ECF Dkt. No. 16 at 20. On July 6, 2015, Parker filed its reply brief. ER 57.

On August 10, 2015, the District Court granted Parker's motion without leave to amend. ER 10. The court held that the OCSLA precluded the application

of state law to offshore oil platforms. ER 7. The court reasoned that the Fair Labor Standards Act of 1938 ("FLSA") has no "significant voids or gaps" in its coverage and, as a result, it is not "necessary" to apply the wage-and-hour laws of the adjacent state, California. *Id.*

On September 3, 2015, Newton filed his notice of appeal. ER 1.

VI. SUMMARY OF ARGUMENT

Newton's appeal is confined to a narrow legal issue, one that is of first impression: whether California wage-and-hour laws apply on oil platforms off the coast of California, when workers begin and/or end their workweek in California. In answering this question in the negative, the District Court mistakenly applied an incorrect, overly restrictive legal standard under the OCSLA, i.e., that state law applies on the oil platforms only when the state law is necessary to fill a significant void or gap in federal law, and that if there is any federal statute, common law, or regulation that in any way touches upon the subject matter of a state statute, it would be unnecessary for state law to apply. Applying this standard, the District Court concluded that the FLSA – including Department of Labor regulations and case law construing the Act and regulations – is a comprehensive statutory scheme, and that it is unnecessary for state law to fill in any of its gaps. ER 7.

The legal standard applied by the District Court was incorrect. The test for

whether a state law applies as surrogate federal law under the OCSLA is set forth in *Union Texas Petroleum Corp. v. Union Texas Engineering, Inc.*, 895 F.2d 1043 (5th Cir. 1990) ("*Union Texas*"). The third prong of the *Union Texas* test is whether the state law is *inconsistent* with federal law. *Id.* at 1047. This "inconsistency" prong requires that a state law is applied as surrogate federal law on the oil platforms unless there is a federal statute with which it is *directly* inconsistent. *Ellis v. Chevron U.S.A. Inc.*, 650 F.2d 94, 98 (5th Cir. 1981).

The California wage-and-hour laws at issue in this case are not directly inconsistent with any federal statutes, and they must be applied as surrogate federal law on the OCS. Moreover, a portion of Newton's workweek was spent off of OCS platforms, either on a vessel in the waters off of the California coast or on its shore, so California law would undoubtedly apply to that portion of his workweek. California must be allowed to exercise its police powers over the OCS off its coast, just as it may on the high seas off its coast, because doing so will not disrupt the guiding purposes of the OCSLA or the FLSA. For these reasons, the District Court's order granting Parker's Motion for Judgment on the Pleadings must be reversed. At a minimum, Newton should be allowed to amend his complaint to cure any deficiencies, such as clarifying which claims arose in California or stating claims under Federal law.

VII. ARGUMENT

A. The Outer Continental Shelf Lands Act (OCSLA).

The OCSLA was enacted in 1953 to establish federal jurisdiction over the submerged lands beyond the jurisdiction of the states in order to promote the orderly exploitation of minerals lying below the seabed. *Valladolid v. Pac. Operations Offshore, LLP*, 604 F.3d 1126, 1133 (9th Cir. 2010) *aff'd and remanded sub nom. Pac. Operators Offshore, LLP v. Valladolid*, 132 S. Ct. 680 (2012).

The OCSLA asserts the "jurisdiction, control, and power of disposition" of the United States over the subsoil and seabed of the OCS. 43 U.S.C. § 1332(1). This "jurisdiction and control" includes the power to make the necessary laws applicable to, as well as to adjudicate controversies arising from, activities on the OCS. *See* Gerard J. Mangone, *Marine Policy for America* 166-184 (1977); *Valladolid*, 604 F.3d at 1133-34.

The OCSLA delegates to the Secretary of the Interior the power to lease and administer the OCS and generally to enforce the OCSLA. 43 U.S.C. §§ 1331(6), 1334(a), 1337. It delegates to the Coast Guard the duty of promoting safety on the artificial islands and adjacent waters of the OCS. 43 U.S.C. § 1333(d).

The OCSLA also applies the National Labor Relations Act, 29 U.S.C. §§ 151-169, to unfair labor practices on OCS platforms, *Mills v. Director, OWCP*, 877

F.2d 356, 358-59 (5th Cir. 1989), and extends the benefits of the Longshore & Harbor Workers' Compensation Act ("LHWCA" or "Longshore Act"), 33 U.S.C. §§ 901-950, to employees disabled or killed during operations conducted on the OCS for the purpose of developing the natural resources thereof. 43 U.S.C. § 1333(b); *see also Mills*, 877 F.2d at 357-58 (holding that "the LHWCA provides the exclusive remedy of an injured employee against his employer"). Conversely, the OCSLA provides that only federal taxation laws apply on the OCS. 43 U.S.C. § 1333(a)(2)(A).

B. The Role of State Law under the OCSLA.

Although federal law applies on the OCS, state law does too. The OCSLA defines "a body of law applicable to the seabed, the subsoil, and the fixed structures . . . on the outer Continental Shelf." *Rodrigue v. Aetna Cas. & Sur. Co.*, 395 U.S. 352, 355 (1969). The OCSLA adopts the laws of the adjacent state to the extent they are "applicable and not inconsistent with" the OCSLA or other federal laws or regulations promulgated by the Secretary of the Interior. 43 U.S.C. §§ 1331(b), 1333(a)(1)-(2); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 217 (1986); *Rodrigue*, 395 U.S. at 355-56.

Thus, fixed structures on the OCS are treated as "federal enclaves," *Rodrigue*, 395 U.S. at 355, 366, and state law applies to all such structures that would fall within the state's boundaries were they extended seaward. 43 U.S.C. §

1333(a)(2)(A); *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 485-86 (1981) ("*In any particular case*, the adjacent State's law applies to those areas "which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf ...." (emphasis added)).

The congressional decision to rely on state law arises out of three considerations. Apryl E. Hand, *The Role of State Law in the Outer Continental Shelf Lands Act*, 72 Tul. L. Rev. 2139, 2142-43 (1998). First, "the federal Code was never designed to be a complete body of law in and of itself." *Rodrigue*, 395 U.S. at 365 (internal quotations omitted). Therefore, resort to state law was needed to fill in the gaps. *Id.* at 357 ("Since federal law, because of its limited function in a federal system, might be inadequate to cope with the full range of potential legal problems, the Act supplemented gaps in the federal law with state law through the 'adoption of State law as the law of the United States"' (citation omitted)).

Second, "Congress also recognized that the 'special relationship between the men working on these artificial islands and the adjacent shore to which they commute' favored application of state law with which these men and their attorneys would be familiar." *Chevron Oil Co. v. Huson*, 404 U.S. 97, 103 (1971) (quoting *Rodrigue*, 395 U.S. at 363-65). A Texas court interpreted *Rodrigue* to "indicate[] that it will be the exception and not the rule when state law does not apply under OCSLA." *Greer v. Services, Equip. & Eng'g, Inc.*, 593 F. Supp. 1075,

1078 (E.D. Tex. 1984); *see also Thompson v. Teledyne Movible Offshore, Inc.*, 419 So. 2d 822, 828 (La. 1982) ("recent United States Supreme Court decisions effectively invite the state courts to apply state law in matters arising on the outer Continental Shelf if otherwise within the subject matter jurisdiction of the state court.").

In this same vein, the OCSLA specifically states that it is the policy of the United States that "the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, *human*, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized." 43 U.S.C. § 1332(5) (emphasis added).

Finally, even though these activities were conducted on the high seas, federal maritime law would not apply of its own force, *Herb's Welding, Inc. v. Gray*, 470 U.S. 414, 422 (1985), to these "stationary structures not erected as navigational aids," *Rodrigue*, 395 U.S. at 364, nor was maritime law suited to deal with mineral exploration. *Id.* at 365, n. 12.

When state law is applicable, it is applied as federal law, *Rodrigue*, 395 U.S. at 355-56, the "law of the federal forum." *Huson*, 404 U.S. at 103. In order for state law to apply as surrogate federal law under OCSLA, federal law must first apply, *Rodrigue*, 395 U.S. at 357-59, and there must then be a gap in the federal

law. *Nations v. Morris*, 83 F.2d 577, 585 (5th Cir. 1973).

When state law is adopted as surrogate federal law on the OCS, state remedies are also adopted, so long as they are not inconsistent with federal law. *Bourg v. Texaco Oil Co., Inc.*, 578 F.2d 1117, 1120 (5th Cir. 1978). All aspects of those remedies are applicable, except for "mere 'housekeeping rules.'" *Huson*, 404 U.S. at 103, n. 6. In other words, "[t]he federal borrowing of state law under the OCSLA is all-inclusive ..." *Bonner v. Chevron U.S.A.*, 668 F.2d 817, 819 (5th Cir. 1982).

From these principles arose the three-part test of *Union Texas*, 895 F.2d 1043. Hand, *supra*, 72 Tul. L. Rev. at 2143-44. The *Union Texas* court stated, "[F]or adjacent state law to apply as surrogate federal law under OCSLA, three conditions are significant.

> 1. The controversy must arise on a situs covered by OCSLA (i.e. the subsoil, seabed, or artificial structures permanently or temporarily attached thereto).
> 2. Federal maritime law must not apply of its own force.
> 3. The state law must not be inconsistent with federal law."

Id. at 1047. The Fifth Circuit applies the *Union Texas* standard to all OCSLA cases. *See Tetra Techs., Inc. v. Cont'l Ins. Co.*, No. 15-30446, 2016 WL 730824, at *2 (5th Cir. Feb. 24, 2016).

C. The District Court's "Necessity" Test for the Application of State Law under the OCSLA.

The District Court did not apply the *Union Texas* test. Rather, it applied a more stringent test that does not comport with the Congressional intent in enacting the OCSLA or the case law construing it.

Throughout its decision, the District Court analyzed each of Newton's statutory claims under an impermissibly narrow "necessity test." The District Court found support for such a test in *Continental Oil Co. v. London Steam-Ship Owners' Mut. Ins. Ass'n*, 417 F.2d 1030 (5th Cir. 1969). The OCSLA adopts the laws of the adjacent state to the extent they are "applicable and not inconsistent with ... other federal laws...." 43 U.S.C. § 1333(a)(2)(A). The Fifth Circuit in *Continental Oil* noted that the term "applicable" "must [be] read in terms of necessity – necessity to fill a significant void or gap." *Continental Oil*, 417 F.2d at 1036. The Fifth Circuit went on to explain that "[t]his is the recurring theme of *Rodrigue*." *Id.*

Continental Oil's "necessity" test is entirely dicta. *Continental Oil* involved a collision between a vessel and a structure on the OCS. *Id.* at 1031. The Fifth Circuit held that the occurrence was "clearly a maritime claim," *id.* at 1032, and that maritime law provided the substantive rights and remedies.[2] *Id.* at 1036.

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[2] Under the *Union Texas* test, state law would not apply as surrogate federal law

Moreover, while *Continental Oil* noted that "applicable" must be "read in terms of necessity…," it later on states in stark contradiction that "both 'applicable' and the 'not inconsistent' elements are interpreted together. The term 'applicable' gets much of its meaning from factors bearing on 'not inconsistent.'" *Id.* at 1040. Finally, while *Continental Oil* explained that the necessity test was a "recurring theme of *Rodrigue*," the *Rodrigue* decision never mentions the phrases "necessity" or "significant [void or gap]." *See generally Rodrigue*, 395 U.S. 352. The "test" of applicability set forth in *Continental Oil*, therefore, is not controlling.

The Supreme Court has since rejected such a narrow reading of the term "applicable." In *Gulf Offshore*, the Supreme Court held that "*in any particular case*, the adjacent State's law *applies* … to the outer margin of the outer Continental Shelf." *Gulf Offshore*, 453 U.S. at 485-86 (emphasis added). So, under *Gulf Offshore*, state law applies by default, unless it is inconsistent with federal law. Indeed, the Fifth Circuit, which rendered the *Continental Oil* decision in 1969, later held that applicability and inconsistency analyses are one and the same – i.e., a state law is applicable when it is not inconsistent with a federal law. *Oliver v. Aminoil, USA, Inc.*, 662 F.2d 349, 351, fn. 1 (5th Cir. 1981) ("Under the Outer Continental Shelf Lands Act, the law of the adjacent state is applicable to

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under the OCSLA if maritime law applied of its own force. *Union Texas*, 895 F.2d at 1047. In *Continental Oil* the claim was purely maritime in nature, so state law would never apply to its facts under the OCSLA.

fixed structures on the Outer Continental Shelf as federal law when not inconsistent with applicable federal law."). Some later Fifth Circuit cases continue to mention the "necessity" test from *Continental Oil*, but their reliance on it is misplaced because they do not follow Supreme Court precedent as set forth in *Gulf Offshore*. *See Nations*, 483 F.2d 577, 585; *LeSassier v. Chevron USA, Inc.*, 776 F.2d 506, 509 (5th Cir. 1985).

Even though *Nations* and *LeSassier* mention the "necessity" test, these two cases do not apply it as stringently the District Court did here. Instead, as will be discussed at length below, these cases stand for the proposition that a state law cannot apply as surrogate federal law when it directly conflicts with a Federal statutory provision. *Nations*, 483 F.2d at 586-87; *LeSassier*, 776 F.2d at 509-10. The District Court instead found that a state law would not apply as surrogate federal law if the state law in any way was related to any federal statute, regulation, or common law. ER 8-10. This is the key error committed by the District Court, which should have instead used the *Union Texas* test and applied it in line with the Supreme Court's precedent in *Gulf Offshore*, *Rodrigue*, and *Huson* and cases that follow their more permissive approach to the inconsistency analysis.

D. The Fifth Circuit's *Union Texas* Test for the Application of State Law under the OCSLA.

1. Prong 1: Whether the Controversy Arose on an OCSLA Situs.

Under the *Union Texas* test, in order for state law to apply as surrogate

federal law, the controversy must arise on a situs covered by OCSLA (i.e. the subsoil, seabed, or artificial structures permanently or temporarily attached thereto). *Union Texas*, 895 F.2d at 1047. Newton concedes that at least a portion of the within controversy applies on a situs covered by the OCSLA, since the majority of his hitch was spent aboard an oil platform on the OCS. For that time, the *Union Texas* situs prong is satisfied.

The situs prong is not satisfied, however, for some portion of Newton's hitch, but California law would nevertheless apply to that other portion. In order for Newton to get to the oil platform in question, he had to travel on boats from and back to Goleta, California. ER 26, ER 14-15. Effectively, on those days, he either began or ended his workday on shore in California. There can be no doubt that California's wage-and-hour laws apply to workers on its soil, *see Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191, 1197 (2011), and on the high seas in the Santa Barbara Channel. *Pac. Merch. Shipping Ass'n v. Aubry*, 918 F.2d 1409, 1420 (9th Cir. 1990). Hence, for the time during Newton's hitch that was spent working either in California or on the high seas off its coast, California's wage-and-hour laws would apply, and it was improper for the District Court to dismiss Newton's state law claims to the extent that they relate to these days and hours.

2. Prong 2: Whether Federal Maritime Law Applies of its own Force.

Federal maritime law with regard to the payment of wages does not apply of

its own force on platforms on the OCS. The maritime wage statutes apply to "seamen." *See* 46 U.S.C. §§ 10313, 10504. "As a matter of general maritime law, the term 'seamen' includes a broad range of marine workers whose work on a vessel on navigable waters contributes to the functioning of the vessel, to accomplishment of its mission, or to its operation or welfare." *Aubry*, 918 F.2d at 1412 (citing 46 U.S.C. § 10101(3)). Newton was not a "seaman" under this definition, since during the majority of his hitch he worked onboard an oil platform, not in one of these enumerated vessel-related occupations. ER 27. Hence, federal maritime law would not apply of its own force to his employment on the platforms, satisfying this prong of the *Union Texas* test.

3. Prong 3: Whether State Law is Inconsistent with Federal Law.

The final prong of the *Union Texas* test is that, in order for state law to apply as surrogate federal law, it must not be inconsistent with federal laws. *Union Texas*, 895 F.2d at 1047. The District Court did not directly address this inconsistency prong, holding instead that the California Labor Code did not apply because the FLSA was a comprehensive statutory scheme that had no "significant void or gap" for state law to fill. ER 8.

The District Court's analysis was overly restrictive, and its conclusion erroneous. The District Court ignored the general rule in OCSLA case law that, even when there is a comprehensive federal statutory scheme that provides

exclusive remedies, state law can fill in any gaps therein. For example, in *Fontenot v. Dual Drilling Co.*, 179 F.3d 969 (5th Cir. 1999), at issue was whether Louisiana law was inconsistent with federal law under the OCSLA. The plaintiff suffered a work-related injury on an oil platform on the OCS, and he brought suit against his employer for negligence. *Id.* at 971. At trial, the employer contended that the jury verdict form should direct the jury to quantify the employer's fault, per Louisiana law. *Id.* at 972. The trial court denied the request, and the jury awarded damages. *Id.* at 971-72.

On appeal, the employer argued that Louisiana state law should apply, because it was not inconsistent with the Longshore Act/LHWCA, as the LHWCA does not specifically prohibit the quantification of employer fault. *Id.* at 972. The plaintiff argued that the LHWCA sets forth a "loss allocation scheme" that is inconsistent with Louisiana's comparative negligence scheme. *Id.* Under the LHWCA, an employer's liability to an employee who is injured on the job is essentially limited to payment of compensation. *See* 33 U.S.C. § 905(a). The LHWCA also allows the employee to recover for injuries resulting from the fault of third parties. *See* 33 U.S.C. § 933(a). Under this scheme, "[t]he employee need not choose whether to receive compensation or to recover damages against a third person; he can do both." *Fontenot*, 179 F.3d at 972. If the employee recovers against the third party, it reduces the amount the employer would have to pay. *Id.*

at 972-73. Despite the existence of this scheme to recover from third parties, "the LHWCA is silent on the issue of quantification of employer fault." *Id.* at 973. Louisiana law, on the contrary, provides for comparative negligence in injury actions. *Id.*

The Fifth Circuit in *Fontenot* found that the OCSLA did not bar the application of the Louisiana comparative negligence statute because the LHWCA was silent on this exact issue. *Id.* at 977. It was irrelevant that the OCSLA specifically directs that the LHWCA applies to injuries sustained on OCS installations, 43 U.S.C. § 1333(c), that LHWCA provides the exclusive remedy for such injuries, 33 U.S.C. § 933(i), and that the LHWCA has a third-party liability scheme in place, 33 U.S.C. § 933. Instead, the relevant inquiry was whether there was "express language" in the LHWCA "addressing the subjects of allocation of fault or proportionate liability." *Fontenot*, 179 F.3d at 973. Finding there was no "express conflict" of that sort, the state comparative negligence statute must apply. *Id.* at 973, 977. Thus, even when there is a comprehensive federal statutory scheme such as the LHWCA, which provides exclusive remedies, if the federal statute does not expressly address a specific subject covered by state law, there is a gap that the state law can fill.

Nations, 483 F.2d 577, is an example of when a state law was held to be inconsistent with the LHWCA, and the decision turned on the fact that the state

law in question had a direct counterpart in the federal exclusive statutory scheme. In *Nations*, a worker injured on an oil platform attempted to bring an action against the employee who inflicted the injury and his employer's insurer under the Louisiana "Direct Action Statute." *Id.* at 579-580. The Fifth Circuit held that the worker's claim was barred because it arose under the LHWCA and the LHWCA specifically barred actions against co-workers and insurers. *Id.* at 586-87. Thus, an exact federal counterpart to the state law existed, so the state law could not be adopted as surrogate federal law.

Likewise, in *LeSassier*, 776 F.2d 506, the Fifth Circuit held that there was no gap in the LHWCA sufficient to allow for the application of a state wrongful discharge claim because Congress provided a specific statutory provision, 33 U.S.C. § 948a, to address retaliatory discharges arising out of the LWHCA. *Id.* at 509-510. Again, directly inconsistent state laws will not be applied as surrogate federal law under the OCSLA.

By contrast, where there is no direct federal counterpart to a state statute, the state statute will apply as surrogate federal law. In *English v. Wood Group PSN, Inc.*, 2015 WL 5061164, *8 (E.D. La. 2015), an issue raised was whether a Louisiana whistleblower anti-retaliation statute was applicable and inconsistent with federal statutory law. In line with Fifth Circuit precedent in *Nations* and *LeSassier*, the *English* court found that the state statute "has no *direct* counterpart

under federal law" and held "for that very reason the [state statute] is employed under OCSLA as a 'gap-filler' and is surrogate federal law." *Id.* at *8 (emphasis added). Thus, when there is no federal statute *directly* on point, a state law statute may fill in the gap.

Even when a federal statute applies, if the statute has any gaps, state law may fill them. In *Ellis*, 650 F.2d 94, the question presented was whether the OCSLA barred the application of a state statute authorizing awards of prejudgment interest. Existing law held that a federal statute, 28 U.S.C. § 1961, governed the award of interest in OCSLA cases. *Ellis*, 650 F.2d at 98. Section 1961 provides that interest will be calculated "from the date of the entry of judgment." 28 U.S.C. § 1961(a). The district court in *Ellis* did not award prejudgment interest and the plaintiff appealed. *Ellis*, 650 F.2d at 98. The Fifth Circuit held that, while section 1961 did not specifically authorize an award of prejudgment interest, section 1961 likewise did not bar such an award – in other words, section 1961 was "silent" on this issue of prejudgment interest – and the district court could award prejudgment interest under state law. *Id.* Despite the fact that various federal courts interpreted section 1961 to preclude awards of prejudgment interest, the *Ellis* court held that there was a gap in the *statute* on this issue, and the trial court could have awarded prejudgment interest under state law. *Id.*

The *Ellis* decision is consistent with Supreme Court OCSLA authority that

holds that, if there is a gap in the federal statutory scheme, courts *cannot* fill in the gaps with federal common law. *Huson*, 404 U.S. at 104-105; *see Olsen v. Shell Oil Co.*, 708 F.2d 976, 984 (5th Cir. 1983) (following and approving *Ellis* and noting that its holding is consistent with *Rodrigue* and *Huson*). Reasoning that "Congress recognized that 'the federal Code was never designed to be a complete body of law in and of itself' and thus that a comprehensive body of State law was needed," the Supreme Court in *Huson* held that a state statute of limitations on a personal injury claim arising on an OCS installation must be applied, rather than the federal common law doctrine of laches. *Huson*, 404 U.S. at 103 (quoting *Rodrigue*, 395 U.S. at 358). "Congress made clear provision for filling in the 'gaps' in federal law; it did not intend that federal courts fill in those 'gaps' themselves by creating new federal common law." *Id.* at 104-05. Likewise, the *Ellis* court applied a state prejudgment interest law even though federal common law precluded an award of prejudgment interest under 28 U.S.C. § 1961. This precedent emphasizes that federal common law cannot fill in the gaps in federal statutory schemes on OCS installations; state law must be applied instead.

Similarly, inconsistency with a federal *regulation* promulgated by an agency other than the Department of the Interior does not bar the application of a state law as surrogate federal law on the OCS. Congress's intent in this regard is evident in the plain language of the OCSLA. Section 1333 of the OCSLA provides, in

relevant part:

> To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf.

43 U.S.C. § 1333(a)(2).

The reference in section 1333(a)(2) to "this subchapter" is Subchapter III "Outer Continental Shelf Lands" of Chapter 29 "Submerged Lands" of Title 43 "Public Lands of the United States Code." In other words, "this subchapter" is the OCSLA. The OCSLA's reference to "regulations of the Secretary" means regulations promulgated by the Secretary of the Interior. *See* 43 U.S.C. § 1331(b) (defining the term "Secretary" as used in the OCSLA as the Secretary of the Interior or, in certain situations not applicable here, the Secretary of Energy or the federal Energy Regulatory Commission). Thus, under the OCSLA's plain terms, an applicable state law that is inconsistent with federal laws or *regulations promulgated by the Secretary of the Interior* does not apply as surrogate federal law. Consequently, inconsistency with regulations promulgated by departments other than the Department of the Interior does not bar the application of the state

law.

In light of the precedent discussed above and the plain language of the OCSLA, even comprehensive federal statutes that provide for exclusive remedies (such as the Longshore Act/LHWCA) have gaps that state law can fill. In such a situation, the question is whether the state law is inconsistent with a *direct* counterpart of federal statutory law or regulations promulgated by the Secretary of the Interior.

E. The FLSA Sets Minimum Labor Standards and Does Not Address All Areas of Wage-and-Hour Concern.

Prior to addressing how the state laws in question here are not inconsistent with federal statutes, it is important to explain the extent and coverage of the FLSA.

1. The Wage-and-Hour Provisions Addressed by the FLSA.

Section 6 of the FLSA mandates payment of a minimum wage and section 7 sets maximum hours, which, when exceeded, requires the payment of overtime wages. *See* 29 U.S.C. §§ 206, 207. Violations of either of these sections may lead to the recovery of "the amount of ... unpaid minimum wages, or ... unpaid overtime compensation," together with "an additional equal amount as liquidated damages." *Id.*, § 216(b); *see also id.*, § 260 (allowing the court to forego an award of liquidated damages where the employer acted in good faith).

The minimum wage rate established by the FLSA at all times relevant herein

has been $7.25 per hour. 29 U.S.C. § 206 (2007). The overtime limit under section 7 of the FLSA is forty hours per week; work done in excess of forty hours must be compensated at a rate at least one-and-a-half times the regular work rate. *Adair v. City of Kirkland,* 185 F.3d 1055, 1059 (9th Cir. 1999); *see* 29 U.S.C. § 207(a)(1).

The FLSA additionally requires employers to keep accurate records of hours worked and wages paid to employees. *See* 29 U.S.C. § 211.

2. Federal Regulations Provide Guidance Regarding the FLSA but Do Not Have the Force of Law.

The regulatory body charged with administering the FLSA is the Wage and Hour Division of the Department of Labor. 29 U.S.C. § 204. The Wage and Hour Division has issued non-binding regulations concerning its policies to enforce the FLSA. *See generally* 29 CFR Parts 541-870. Such regulations "are not, of course, conclusive, even in the cases with which they directly deal, much less in those to which they apply only by analogy. They do not constitute an interpretation of the [FLSA] or a standard for judging factual situations which binds a district court's processes, as an authoritative pronouncement of a higher court might do." *Skidmore v. Swift & Co.*, 323 U.S. 134, 139 (1944); *Bright v. Houston Nw. Med. Ctr. Survivor, Inc.*, 934 F.2d 671, 676 (5th Cir. 1991) (noting that the "on-call" regulations issued by the Department of Labor in 29 C.F.R. Part 785 "do not have the force of law and that we are not required to defer to them, although they may

properly be considered as to some degree persuasive"); *Bouchard v. Regional Governing Bd. Of Region V Mental Retardation Services*, 939 F.2d 1323, 1327 (8th Cir. 1991) (explaining that Part 785 of the Wage and Hour Division Regulations originated in 1961 as "an interpretive bulletin").

3. The Purpose of the FLSA is to Set Minimum Labor Standards that May Be Supplemented by the States.

The Ninth Circuit has rejected the argument that the FLSA provides the exclusive remedy for overtime and minimum wage violations. *Williamson v. Gen. Dynamics Corp.*, 208 F.3d 1144, 1151 (9th Cir. 2000) (noting that the FLSA's "savings clause" indicates that it does not provide an exclusive remedy). Rather, the FLSA was enacted to provide *minimum* labor standards: "[The FLSA] was designed to provide a minimum standard of living necessary for the health, efficiency, and general well-being of workers ..., as well as to prescribe certain minimum standards for working conditions." *Brennan v. Wilson Bldg., Inc.*, 478 F.2d 1090, 1094 (5th Cir. 1973) (internal citation omitted).

"Further, the purpose behind the FLSA is to establish a national *floor* under which wage protections cannot drop, not to establish absolute uniformity in minimum wage and overtime standards nationwide at levels established in the FLSA." *Aubry*, 918 F.2d at 1425 (emphasis in the original).

The FLSA does not expressly prohibit state legislation in the area of wages and working conditions. *Maccabees Mut. Life Ins. Co. v. Perez-Rosado*, 641 F.2d

45, 46 (1st Cir. 1981). To the contrary, in addition to protecting workers by establishing a minimum wage and maximum hours, the FLSA contains a "savings clause" that enables states and municipalities to enact more favorable wage, hour, and child labor legislation. *Williamson*, 208 F.3d at 1150 (citing 29 U.S.C. § 218(a)). The savings clause's plain language "evinces a clear intent to preserve rather than supplant state law." *Knepper v. Rite Aid Corp.*, 675 F.3d 249, 262 (3d Cir. 2012). Moreover, "the presence of the savings clause undermines any suggestion that Congress intended to occupy the field of wage and hour regulation." *Id.*

Nor does the FLSA implicitly prohibit state regulation by occupying the whole field and leaving no room for supplementary state provisions. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Courts have upheld state wage-and-hour laws, as laws "with a social redeeming value and purpose" and authorized under the traditional "police power" belonging to states. *Maccabees*, 641 F.2d at 46. "States ... possess broad authority under their police powers to regulate the employment relationship to protect resident workers." *Aubry*, 918 F.2d at 1415-1416 (citing *De Canas v. Bica,* 424 U.S. 351, 356 (1976)). Thus, the Ninth Circuit "start[s] with the assumption that the historic powers of the States were not to be superseded by [federal legislation] unless that was the *clear and manifest* purpose of Congress." *Id.* at 1416 (quoting *Chevron U.S.A., Inc. v. Hammond*, 726 F.2d

483, 488 (9th Cir. 1984)); *Napier v. Atl. Coast Line R. Co.*, 272 U.S. 605, 611 (1926) ("The intention of Congress to exclude states from exerting their police power must be clearly manifested."). The FLSA's savings clause is evidence that there is no clear and manifest purpose of Congress to supersede state overtime and minimum wage protections. *Pettis Moving Co. v. Roberts*, 784 F.2d 439, 441 (2d Cir. 1986).

4. The Gaps in the FLSA – Wage-and-Hour Issues It Does Not Address.

The FLSA has gaps in its coverage. For example, the FLSA does not set daily or seventh-day overtime protections or provide for doubletime premiums. *See* 29 U.S.C. § 207. But the FLSA allows states to provide these types of heightened overtime protections. 29 U.S.C. § 218; *Pettis*, 784 F.2d at 441.

The FLSA also does not define "hours worked" for the purposes of its overtime and minimum wage protections. The term "hours worked" appears in the FLSA only once. *See* 29 U.S.C. § 203(o). The FLSA only specifies certain activities that are *excluded* from compensable hours worked. *Id.* Of note here, the FLSA does not provide that time an employee must remain on the employer's premises – even time spent sleeping – must be excluded from compensable "hours worked" under the Act. *Id.*

The FLSA does not mandate that employees take meal periods or receive any sort of premium pay for denied meal periods. *Busk v. Integrity Staffing Sols.,*

Inc., 713 F.3d 525, 531 (9th Cir. 2013) *rev'd on other grounds*, 135 S. Ct. 513 (2014) ("FLSA does not require compensation for an employee's lunch period.").

Although the FLSA does require that employers keep accurate records of hours worked and wages paid to employees, 29 U.S.C. § 211(c), the FLSA does not require an employer to provide employees pay stubs.

The FLSA does not set forth a deadline by which an employer must pay a terminated employee his or her wages. *Davis v. Maxima Integrated Products*, 57 F. Supp. 2d 1056, 1058 (D. Or. 1999) ("Federal law provides that an employer who fails to pay minimum wages and/or overtime wages may be subject to a penalty equal to the amount of unpaid compensation. 29 U.S.C. § 216(b). The statute is silent as to timing.") It follows that the FLSA does not impose a penalty for the late payment of final wages.

F. The State Law Claims Asserted by Newton are Not Inconsistent with the FLSA.

The state law claims asserted by Newton apply on the OCS and are otherwise not inconsistent with the FLSA.

1. California's Overtime Laws Are Not Inconsistent with the FLSA.

The District Court erroneously granted judgment in Parker's favor on Newton's claims under California Labor Code sections 510, 1194, and 1197 for unpaid overtime and doubletime premiums and minimum wages. Sections 1194 and 1197 direct employers to compensate employees at the state-mandated

minimum wage for all hours worked. Cal. Lab. Code §§ 1194, 1197. Section 510 provides that eight hours of labor constitutes a day's work and provides compensation rates for work in excess of eight- and twelve-hour workdays. Cal. Lab. Code § 510(a).

Newton alleged that Parker violated Labor Code section 510 and Wage Order 16-2001 section 3, 8 Cal. Code Regs. § 11160(3), by not paying overtime or doubletime wages when required by law and by failing to pay overtime at the proper rates of pay. ER 35-36. His claim was predicated on the fact that state law considers all time an employee may not leave the worksite to be "hours worked." ER 35. He sought overtime and doubletime premiums. ER 35-36.

The District Court concluded that these Labor Code provisions do not apply on installations on the OCS. ER 8-9. This conclusion was erroneous, because the OCSLA extends the laws of the state of California to the outer limits of the Continental Shelf, making them applicable to installations thereon. 43 U.S.C. § 1333(a)(2)(A); *Gulf Offshore*, 453 U.S. at 485-86. Hence, California's Labor Code is indeed applicable to installations on the Outer Continental Shelf. Rather, the question is whether its overtime provisions are inconsistent with the FLSA.

The District Court did not address this inconsistency prong of the *Union Texas* analysis. ER 8-9. Instead, the District Court noted that the FLSA provides a comprehensive scheme providing for minimum wages and overtime pay, including

a definition of "hours worked." ER 9. Based on these two factors, the District Court found that there was no "significant void or gap" in the FLSA's coverage of Newton's overtime/doubletime claim, and, consequently, California wage-and-hour laws were inapplicable. ER 8-9.

The court's conclusion was erroneous because the FLSA is not a comprehensive scheme without gaps that state wage-and-hour law may fill. Unlike the Longshore Act/LHWCA, which is a comprehensive statutory scheme and provides the exclusive remedy for injury actions occurring on OCSLA installations, *see Nations*, 483 F.2d at 586-587, *LeSassier*, 776 F.2d at 509-510, the FLSA is not an exclusive remedy for wage-and-hour claims and does not preclude a state law cause of action for unpaid wages. *Williamson*, 208 F.3d at 1152. Even if the FLSA were the exclusive remedy for wage-and-hour violations, such exclusive statutory schemes may still have gaps that state law can fill. *See Fontenot*, 179 F.3d at 977.

The FLSA does not set daily or seventh-day overtime protections or provide for doubletime premiums. *See* 29 U.S.C. § 207. However, in its savings clause, the FLSA explicitly allows for concurrent state regulation of overtime protections that are greater than the weekly overtime standard set by section 207. 29 U.S.C. § 218(a). Because of the savings clause, a state overtime law that provides greater protections than the FLSA is not inconsistent with the FLSA. *Pettis*, 784 F.2d at

441 (truckers exempt from overtime under the FLSA were held to be owed overtime wages under New York state law because there was no inconsistency between joint overtime regulation). The savings clause evidences "Congress' intent to allow state regulation to coexist with the federal scheme." *Overnite Transp. Co. v. Tianti*, 926 F.2d 220, 222 (2d Cir. 1991).

This situation is akin to that in *Ellis*. The *Ellis* court concluded that, even though a federal statute addressed awards of *post*-judgment interest, its silence on whether courts could award *pre*judgment interest created a gap that could be filled with a state law that authorized an award of prejudgment interest. *Ellis*, 650 F.2d at 98. Here, where the FLSA permits greater protections by state law and is otherwise silent on whether overtime must be paid for hours worked in excess of eight in a day or for work performed on the seventh straight day of a workweek, a state law providing such protections must fill in the gap left by the FLSA.

Similarly, the FLSA also does not define "hours worked" for the purposes of its overtime and minimum wage protections – opening up a gap for the application of state law. Although the FLSA does not define hours worked, the courts have developed common law standards to determine whether an activity constitutes work under the FLSA. *See Leone v. Mobil Oil Corp.*, 523 F.2d 1153, 1162 (D.C. Cir. 1975) ("The concept of 'hours worked' or 'working time,' therefore, has necessarily evolved through case law to delineate which employee activities are

covered for purposes of minimum wage and maximum hours"). Nonbinding regulations promulgated by the Department of Labor also provide guidance on what is to be considered hours worked under the FLSA. *See* 29 C.F.R. Part 785. Yet, as discussed hereinabove, a state law applies as surrogate federal law on the OCS even if it is inconsistent with federal common law, *Huson*, 404 U.S. at 104-105, *Ellis*, 650 F.2d at 98, or regulations promulgated by an agency other than the Department of the Interior, 43 U.S.C. §§ 1331(b), 1333(a)(2), so it is irrelevant whether federal common law or nonbinding regulations may be inconsistent with state law on this point. It remains that the FLSA itself – as a statutory scheme – does not define the term "hours worked," leaving a sizeable gap therein.

Under these circumstances, it cannot be said, as the District Court found here, that the FLSA is such a "comprehensive federal statute" that would preclude the application of any state wage-and-hour laws on OCS installations. ER 8-9. In other words, state wage-and-hour law is not inapplicable just because the FLSA exists. *See Fontenot*, 179 F.3d at 977 (holding that a third-party claim under state law was applicable despite the existence of the LHWCA, because the LHWCA was silent on the issue of third-party liability).

Moreover, this Court held in *Aubry* that the Labor Code is applicable outside California's territorial borders, including off its coast. "[W]e hold that, in light of the plain language of the FLSA's savings clause and in the absence of a clear

indication from Congress to the contrary, § 213(b)(6) does not preclude enforcement of California's overtime provisions to protect the California-resident seamen in this case." *Aubry*, 918 F.2d at 1419. The California Supreme Court came to the same conclusion in *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 578-579 (1996), holding that the Wage Orders promulgated by the California Industrial Welfare Commission apply in the federal waters in the Santa Barbara Channel.

The Labor Code's overtime provisions apply to the oil platforms in question for the same reason that the Ninth Circuit in *Aubry* held that they apply to the seamen working in federal waters, three miles off of the California coast. The workers in question in *Aubry* fell under maritime law, and federal courts have enjoyed exclusive jurisdiction over claims involving maritime workers. *See* U.S. Const. Art. III, § 2; *Southern Pacific Co. v. Jensen,* 244 U.S. 205, 215 (1917) ("Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country"). Nevertheless, the *Aubry* court held that state wage-and-hour laws apply to maritime workers off the California coast. *Aubry*, 918 F.2d at 1419. The *Aubry* court noted, "Most important, because the maritime employees involved in this action are California residents who work on vessels that operate exclusively off the California coast, application of the state's overtime law will not disrupt international or interstate commerce." *Id.* at 1425.

The Court concluded that applying California's overtime laws to maritime workers would have a minimal impact on international and interstate maritime commerce; therefore, the "essential features" of exclusive federal jurisdiction are not unduly burdened. *Id.*

Here, the OCSLA similarly states that federal laws apply on the OCS as if the OCS were an "area of exclusive Federal jurisdiction…." 43 U.S.C. § 1333(a)(1). Under the reasoning in *Aubry*, enforcing California's wage-and-hour laws would have a minimal impact on the activities regulated by the OCSLA. This is because the OCSLA exists to promote the orderly exploitation of minerals lying below the seabed, *Valladolid*, 604 F.3d at 1133, not to govern the wages, hours, and working conditions of the employees working on the OCS. In enacting the OCSLA, Congress "specifically rejected national uniformity" of laws on OCS installations. *Huson*, 404 U.S. at 104. "Congress also recognized that the 'special relationship between the men working on these artificial islands and the adjacent shore to which they commute' favored application of state law with which these men and their attorneys would be familiar." *Id.* at 103 (quoting *Rodrigue*, 395 U.S. at 365). Thus, despite the exclusive federal jurisdiction of the OCSLA, the *Aubry* court's reasoning should apply with equal force here, since *Aubry* dealt with the application of state law in the exclusive federal jurisdiction of the high seas. State wage-and-hour laws should apply to the workers on the OCS, just as they did in

Aubry.

Aubry also stands for the proposition that the Labor Code's overtime provisions are consistent with the FLSA. "*California's more protective overtime provisions are compatible with, rather than conflict with, the [FLSA]*." *Aubry*, 918 F.2d at 1424 (emphasis added). Hence, under Ninth Circuit precedent, California's overtime laws are not inconsistent with the FLSA and must apply as surrogate federal law on the OCS.

2. California's Minimum Wage Laws Are Not Inconsistent with the FLSA.

California's minimum wage statutes are also compatible – and not inconsistent – with the FLSA's minimum wage provisions. Newton alleged that Parker violated sections 1194 and 1197 by not paying at least the minimum wage for all hours worked. ER 27-29. While the FLSA sets the minimum wage at $7.25 per hour and California's minimum wage rate is higher, there is nothing in the FLSA that makes the higher state rate inconsistent with the FLSA. Rather, as with state overtime regulation, the savings clause expressly allows states to provide greater minimum wage protections than the FLSA. 29 U.S.C. § 218(a).

The District Court addressed the import of the savings clause in this case and concluded that it exists merely to determine whether the FLSA preempts state overtime or minimum wage laws and was therefore inapplicable in an OCSLA case. ER 8. The District Court analogized the application of the FLSA's Savings

Clause in this case to the decisions in *LeSassier*, 776 F.2d 506, and *Sun Ship, Inc. v. Pennsylvania*, 447 U.S. 715, 724 (1980). ER 8.

The District Court's conclusion in this regard is erroneous for a number of reasons. First and foremost, *LeSassier* and *Sun Ship* dealt with the Longshore Act/LHWCA, which, unlike the FLSA, is a federal statutory scheme that provides exclusive remedies to affected employees. *Mills*, 877 F.2d at 357-58. The LHWCA does not have a savings clause, *see generally* 33 U.S.C. §§ 901-950, and the *LeSassier* court found that nothing in the LHWCA indicated there was any congressional intent to allow states to provide greater workers' compensation protections than those allowed in the LHWCA. *LeSassier*, 776 F.2d at 508-09.

Here, on the contrary, the FLSA's savings clause *does* evidence Congressional intent to allow states to provide greater overtime and minimum wage protections. *Knepper*, 675 F.3d at 262; *Pettis*, 926 F.2d. at 222. Moreover, the state claim that the plaintiff in *LeSassier* attempted to assert had an identical counterpart under the LHWCA. *LeSassier*, 776 F.2d at 507. So there was no gap in the federal law sufficient to permit the enforcement of a competing state claim. *Id.* at 509. Finally, as the *LeSassier* court noted, *Sun Ship* was not an OCSLA case. *Id.* For these reasons, the District Court's reliance on these two cases was misplaced.

Also, as discussed above, contrary to the District Court's assertion, *Aubry* is

controlling here. *Aubry* emphasizes that the savings clause opens the door for states to supplement federal minimum wage and overtime standards, and any such supplementary state laws are consistent with the FLSA. *Aubry*, 918 F.2d at 1424.

There is nothing inconsistent between Newton's minimum wage claim and the FLSA, which allows for greater minimum wage protections under state law. Therefore, California's minimum wage laws must apply as surrogate federal law on the OCS, and Newton's claim thereunder was wrongly dismissed.

3. California's Meal Period Laws Are Not Inconsistent with the FLSA.

Newton claims that Parker denied meal periods to him and the Putative Class in violation of California Labor Code section 226.7 and 512 and Wage Order 16-2001, 8 Cal. Code Regs. § 11160, subd. 10. ER 34. As relief, Newton sought meal period premium wages. *Id.*

Labor Code section 512 provides in part, "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes…." Wage Order 16-2001 section 10 parrots the language of Labor Code section 512 and additionally provides, "Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." 8 Cal. Code Regs. § 11160, subds. 10(A), (B). Labor Code section 226.7 provides, in relevant part, "If an employer fails to provide an

employee a meal … period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, … the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal … period is not provided." Cal. Lab. Code § 226.7(c).

California's meal period laws apply under the plain terms of the OCSLA, as they extend to the outer limits of the Outer Continental Shelf. 43 U.S.C. § 1333(a)(2)(A). *Gulf Offshore*, 453 U.S. at 485-86.

They are also not inconsistent with federal law, because there is a gap in federal law on the topic of meal periods. The FLSA does not contain provisions equal to Labor Code sections 226.7 and 512 or section 10 of Wage Order 16-2001. *Busk*, 713 F.3d at 531.

The District Court concluded that there was no gap in the FLSA sufficient to allow the enforcement of California's meal period laws on the OCS. ER 9. The District Court based its conclusion on the fact that there is a federal *regulation*, 29 C.F.R. § 785.19(b), that fills in the gap in the FLSA. ER 9. Yet 29 C.F.R. § 785.19 is not a regulation promulgated by the Secretary of the Interior. The OCSLA explicitly does not bar the application of state laws that are inconsistent with regulations promulgated by departments other than the Department of the Interior. 43 U.S.C. § 1333(a)(2). Here, 29 C.F.R. § 785.19 was promulgated by

the Department of Labor. *Bouchard*, 939 F.2d at 1327. Moreover, the regulation cited by the District Court does not have the force of law. *Skidmore*, 323 U.S. at 139; *Bright*, 934 F.2d at 676; *Bouchard*, 939 F.2d at 1327.

The District Court's reliance on *California Dairies, Inc. v. RSUI Indemnity Co.*, 617 F. Supp. 2d 1023, 1034 (E.D. Cal. 2009) is also misplaced. ER 9. *California Dairies* arose outside the context of the OCSLA, and the court merely analyzed state and federal law to determine whether the state meal period claims asserted fell within an insurance policy's exclusion of coverage for violations of the FLSA or "any *similar* provision of federal, state or local statutory law." *Id.* at 1026 (emphasis added). The court held that the Labor Code provisions relied upon by the plaintiff in the complaint "have characteristics in common with the corresponding FLSA provisions and are therefore 'similar.'" *Id.* at 1044. The *California Dairies* court did not analyze the FLSA using the same criteria as in an OCSLA case – i.e., whether there was a direct inconsistency between state and federal laws. For this reason, *California Dairies* provides scant value to the situation here.

Here, there is no direct counterpart between California's meal period laws and any federal statutes or regulations governing meal periods. Such state laws should apply as surrogate federal law on the OCS, and Newton's meal period claims should not have been dismissed.

4. California's Unfair Competition Law and PAGA are Not Inconsistent with the FLSA.

The District Court erroneously granted judgment in Parker's favor on Newton's claim under the UCL and the PAGA. The UCL prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice…." Cal. Bus. & Prof. Code § 17200. The UCL "borrows" violations from other laws by making them independently actionable as unfair competitive practices. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1143 (2003). Violation of almost any federal, state, or local law – including a state wage law – may serve as the basis for a UCL claim. *Cortez v. Purolator Air Filtration Products Company*, 23 Cal. 4th 163, 178 (2000). The PAGA allows private individuals to seek civil penalties for violations of the California Labor Code. Cal. Lab. Code § 2699(a).

Newton's UCL and PAGA claims are predicated on Parker's alleged violations of state wage-and-hour laws, including those for unpaid overtime, doubletime, and meal period premiums. ER 31-32, 36-40.

The District Court held that the UCL and PAGA claims are not applicable because the wage-and-hour laws upon which they are based are also not applicable. This conclusion was erroneous, because the OCSLA extends the laws of the state of California to the outer limits of the Continental Shelf. 43 U.S.C. § 1333(a)(2)(A). *Gulf Offshore*, 453 U.S. at 485-86. Hence, California's UCL and

PAGA – like the state wage-and-hour law that underlie it – are applicable to installations on the Outer Continental Shelf.

The next question is whether the UCL and/or PAGA are inconsistent with federal statutory law or regulations promulgated by the Secretary of the Interior. The District Court did not address this question. ER 9-10. Rather, as part of its applicability inquiry, the District Court mentioned that a penalty provision of the FLSA, 29 U.S.C. § 216, leaves no significant gaps for the UCL to fill in the FLSA. ER 9. The District Court did not find that any federal law was inconsistent with the PAGA, yet it dismissed the PAGA claim anyway. ER 10.

The District Court's dismissal of the UCL and PAGA claims must be reversed because there is no direct counterpart to either state statute under federal law. Section 216 of the FLSA is a penalty statute; unlike the UCL and PAGA, however, it does not create a separate cause of action, with separate remedies, for unfair competitive practices and for the recovery of civil penalties. 29 U.S.C. § 216.

As demonstrated throughout this brief, the predicate state law claims for overtime, doubletime, and meal period premiums are not inconsistent with federal law, and therefore the UCL and PAGA should apply as surrogate federal law on the OCS, and Newton's claims under those statutes should not have been dismissed.

5. California's Final Pay Laws Are Not Inconsistent with the FLSA.

Newton's fourth cause of action claims that Parker "willfully failed to pay in accordance with [California] Labor Code sections 201 and 202 all of overtime, meal period, and doubletime wages of the Plaintiff and the Putative Class." ER 32-33. As relief, Newton sought recovery of the underlying wages as well as waiting time penalties under California Labor Code section 203. ER 33.

Under Labor Code section 201, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Cal. Lab. Code § 201. Section 202 that wages due an employee who resigns within 72 hours after termination, unless the employee gives more than 72 hours of notice, in which case the final wages are due at termination. Cal. Lab. Code § 202. Under Labor Code section 203, if an employer willfully fails to comply with the provisions of Labor Code section 201 or 202, "the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action thereof is commenced; but the wages shall not continue for more than 30 days." Cal. Lab. Code § 203.

Newton's claim under section 203 is applicable here, as the OCSLA extends the laws of the state of California to the outer limits of the Continental Shelf. 43 U.S.C. § 1333(a)(2)(A). *Gulf Offshore*, 453 U.S. at 485-86.

Moreover, the FLSA has a gap when it comes to the timing of the payment

of wages at termination. There is no direct counterpart under federal law to a claim under Labor Code section 203. *See Davis v. Maxima Integrated Products*, 57 F. Supp. 2d at 1058.

The District Court relied on a federal enclave case, *Mersnick v. USProtect Corp.*, No. C-06-03993 RMW, 2006 WL 3734396 (N.D. Cal. Dec. 18, 2006), to support its reasoning that section 203 does not apply to the OCS. While the *Mersnick* court held that Labor Code sections 201 through 203 did not per se apply on federal enclaves, 2006 WL 3734396, *7-8, its holding is not binding or persuasive in the context of the OCSLA. Again, the question is not whether the FLSA and its interpreting regulations *generally* deal with the timing of the payment of wages, as the *Mersnick* court noted, *id.* at *8, but whether there is a statutory provision in the FLSA itself that is a *direct counterpart* of the state law that forms the basis of the plaintiff's claim. *Fontenot*, 179 F.3d at 977. The *Mersnick* court did not make such an analysis, and its holding relative to these claims is unfit here. Further rendering its decision inapplicable is the fact that the *Mersnick* court found that the plaintiff did not have standing to bring claims under sections 201, 202, or 203 because he did not allege that he had been discharged or had resigned. *Mersnick*, 2006 WL 3734396, *8.[3]

[3] *Mersnick* stands in contrast to *Korndobler v. DNC Parks & Resorts at Sequoia*, 2015 WL 3797625 (E.D. Cal. June 18, 2015), where the Eastern District of

For these reasons, Labor Code section 203 is applicable and not inconsistent with any federal laws and should remain in effect on the Outer Continental Shelf, and Newton's cause of action under section 203 should not have been dismissed.

6. California's Pay Stub Law is Not Inconsistent with the FLSA.

The District Court erroneously granted judgment in Parker's favor on Newton's claim for defective paycheck stubs under Labor Code section 226. Section 226 mandates that employers provide paycheck stubs to their employees and that the stubs contain certain information. Cal. Lab. Code § 226(a). Section 226 delineates a statutory penalty for the failure to follow its pay stub requirements. Cal. Lab. Code § 226(e).

The FLSA does not require an employer to provide employees pay stubs. Similarly, the FLSA does not prohibit states from requiring employers to provide pay stubs. There is no provision in the FLSA that is even "similar" to section 226. *California Dairies*, 617 F.Supp.2d at 1046. Given that there is no

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California held that state minimum wage laws are consistent with the purpose of the FLSA and, therefore, continue to apply on federal enclaves. *Id*. at *6. To the extent that federal enclave cases like *Mersnick* and *Korndobler* are persuasive to OCSLA cases, the *Korndobler* analysis is the more helpful here, as it addresses the impact of the FLSA's savings clause on whether a state minimum wage claim is consistent with the FLSA. "In light of the Ninth Circuit's recognition of FLSA as providing a 'floor rather than a ceiling' on minimum wage issues and Congress's clear statement the FLSA shall not 'excuse noncompliance with any ... State law ... establishing a minimum wage higher than the [federal] minimum wage,' this Court cannot see how requiring concessionaires to comply with California's minimum wage laws [on a federal enclave] conflicts with FLSA." *Id.* at *6.

federal statute that is directly inconsistent with section 226, the state law should be applied as surrogate federal law on the OCS, and Newton's cause of action under section 226 should not have been dismissed.

G. California's Strong Interest in Regulating Overtime Favors the Application of its Wage-and-Hours Laws Here.

It was Congress's intent to preserve state law on offshore oil platforms. By allowing state law to apply as surrogate federal law on OCS installations, Congress "specifically rejected national uniformity" of laws thereon. *Huson*, 404 U.S. at 104. "Congress also recognized that the 'special relationship between the men working on these artificial islands and the adjacent shore to which they commute' favored application of state law with which these men and their attorneys would be familiar." *Id.* at 103 (quoting *Rodrigue*, 395 U.S. at 365).

It has long been the case that state police powers extend into federal waters off the coast of a state. In *Skiriotes v. State of Florida*, 313 U.S. 69, 77 (1941), the appellant was convicted of violating a Florida law that prohibited the use of using diving equipment to take sponges from the Gulf of Mexico. *Id.* at 70. The appellant argued that state law did not apply in federal waters. *Id.* The high court disagreed, reasoning, "If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not likewise govern the conduct of its citizens upon the high seas with respect to matters in which the State has a legitimate interest and where there is no conflict with acts of

Congress." *Id.* at 77. The Court found that Florida had a legitimate interest in regulating the sponge harvesting industry. *Id.* at 75. The Court also noted that there was a federal law that regulated the sponge industry in ways different from the Florida statute (by, for example, prohibiting the taking of sponges of a certain size), but that the Florida statute otherwise did not conflict with federal law. *Id.* For these reasons, the Court concluded that Florida's sponge law extended into federal waters off its coast.

It is consistent with the articulated Congressional intent behind the OCSLA and the Supreme Court precedent in *Skiriotes*, to allow California to protect its workers on offshore oil platforms by regulating their wages and hours. As in *Skiriotes*, California has a legitimate interest in regulating the wages and hours of its workers. *Sullivan*, 51 Cal. 4th at 1203 ("California has, and has unambiguously asserted, a strong interest in applying its overtime law to all nonexempt workers, and all work performed, within its borders."). These interests extend into the Santa Barbara Channel. *Tidewater*, 14 Cal. 4th at 565 (California's employment laws "implicitly extend to employment occurring within California's state law boundaries, including all of the Santa Barbara Channel."). As in *Skiriotes*, California's wage-and-hour laws do not conflict with the FLSA. *Aubry*, 918 F.2d at 1422-23. For these reasons, it would not contravene Congress's intent in enacting the OCSLA to allow California's wage-and-hour laws to apply on

covered installations such as those here.

VIII. CONCLUSION AND SUMMARY OF REQUESTED RELIEF

For the reasons stated above, Plaintiff Newton respectfully requests that this Court vacate the judgment as to each of his claims for relief or, in the alternative, to direct to the District Court to permit Newton to amend his First Amended Complaint.

RESPECTFULLY SUBMITTED this 17th day of March, 2016,

STRAUSS & PALAY
A Professional Corporation

By: /s/ *Michael A. Strauss*
Michael A. Strauss
Attorneys for Plaintiff-Appellant

IX. CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C) of the Federal Rules of Appellate Procedure and Ninth Circuit Rule 32-1, I certify that the attached Appellant's Brief is proportionately spaced in 14-point Times New Roman typeface and contains 11,878 words (as calculated by Microsoft Word for Mac), excluding the Excerpts of Record, Corporate Disclosure Statement, Statement of Related Cases, Addendum of Pertinent Constitutional Provisions and Statutes, and this Certificate of Compliance.

STRAUSS & PALAY
A Professional Corporation

By: /s/ *Michael A. Strauss*
Michael A. Strauss
Attorneys for Plaintiff-Appellant

X. STATEMENT OF RELATED CASES

The Ninth Circuit appeals in *Jefferson v. Beta Operating Company, LLC*, No. 15-56856, and *Espinoza v. Beta Operating Company, LLC*, No. 15-56819, are related to this appeal, as they also address the application of California law to workers on oil platforms off of the coast of California.

STRAUSS & PALAY
A Professional Corporation

By: /s/ *Michael A. Strauss*
Michael A. Strauss
Attorneys for Plaintiff-Appellant

XI. ADDENDUM OF PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

All pertinent statutes, constitutional provisions, and regulations mentioned in the brief are contained in this Addendum.

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Statutes

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United States Code Annotated
Title 29. Labor
Chapter 8. Fair Labor Standards (Refs & Annos)

29 U.S.C.A. § 203

§ 203. Definitions

Effective: December 16, 2014
Currentness

As used in this chapter--

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(c) "State" means any State of the United States or the District of Columbia or any Territory or possession of the United States.

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e)(1) Except as provided in paragraphs (2), (3), and (4), the term "employee" means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means--

(A) any individual employed by the Government of the United States--

(i) as a civilian in the military departments (as defined in section 102 of Title 5),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

(v) in the Library of Congress, or

(vi) the [1] Government Publishing Office;

(B) any individual employed by the United States Postal Service or the Postal Regulatory Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual--

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who--

(I) holds a public elective office of that State, political subdivision, or agency,

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level,

(IV) is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office, or

(V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

(3) For purposes of subsection (u) of this section, such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

(4)(A) The term “employee” does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if--

(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including

a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.

(5) The term "employee" does not include individuals who volunteer their services solely for humanitarian purposes to private non-profit food banks and who receive from the food banks groceries.

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(g) "Employ" includes to suffer or permit to work.

(h) "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

(i) "Goods" means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof.

(j) "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

(k) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

(l) "Oppressive child labor" means a condition of employment under which (1) any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labor shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to--

(1) the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and

(2) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 206(a)(1) of this title.

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

(n) "Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry.

(o) Hours Worked.--In determining for the purposes of sections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express terms of or by custom or practice under a bona fide collective-bargaining agreement applicable to the particular employee.

(p) "American vessel" includes any vessel which is documented or numbered under the laws of the United States.

(q) "Secretary" means the Secretary of Labor.

(r)(1) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor. Within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (A) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (B) that it will join with other such establishments in the same industry for the

purpose of collective purchasing, or (C) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact that it occupies premises leased to it by a person who also leases premises to other retail or service establishments.

(2) For purposes of paragraph (1), the activities performed by any person or persons--

(A) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is operated for profit or not for profit), or

(B) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and services of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

(C) in connection with the activities of a public agency,

shall be deemed to be activities performed for a business purpose.

(s)(1) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise that--

(A)(i) has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and

(ii) is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated);

(B) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(C) is an activity of a public agency.

(2) Any establishment that has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise. The sales of such an establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection.

(t) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.

(u) "Man-day" means any day during which an employee performs any agricultural labor for not less than one hour.

(v) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(w) "Secondary school" means a day or residential school which provides secondary education, as determined under State law.

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State; or any interstate governmental agency.

(y) "Employee in fire protection activities" means an employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker, who--

(1) is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or State; and

(2) is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

CREDIT(S)

(June 25, 1938, c. 676, § 3, 52 Stat. 1060; 1946 Reorg.Plan No. 2, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, c. 736, § 3, 63 Stat. 911; May 5, 1961, Pub.L. 87-30, § 2, 75 Stat. 65; Sept. 23, 1966, Pub.L. 89-601, Title I, §§ 101-103, Title II, § 215(a), 80 Stat. 830-832, 837; June 23, 1972, Pub.L. 92-318, Title IX, § 906(b)(2), (3), 86 Stat. 375; Apr. 8, 1974, Pub.L. 93-259, §§ 6(a), 13(e), 88 Stat. 58, 64; Nov. 1, 1977, Pub.L. 95-151, §§ 3(a), (b), 9(a)-(c), 91 Stat. 1249, 1251; Nov. 13, 1985, Pub.L. 99-150, §§ 4(a), 5, 99 Stat. 790; Nov. 17, 1989, Pub.L. 101-157, §§ 3(a), (d), 5, 103 Stat. 938, 939, 941; Jan. 23, 1995, Pub.L. 104-1, Title II, § 203(d), 109 Stat. 10; Aug. 20, 1996, Pub.L. 104-188, [Title II], § 2105(b), 110 Stat. 1929; Aug. 7, 1998, Pub.L. 105-221, § 2, 112 Stat. 1248; Dec. 9, 1999, Pub.L. 106-151, § 1, 113 Stat. 1731; Dec. 20, 2006, Pub.L. 109-435, Title VI, § 604(f), 120 Stat. 3242; Pub.L. 113-235, Div. H, Title I, § 1301(b), Dec. 16, 2014, 128 Stat. 2537.)

Footnotes

1 So in original. Probably should be preceded by "in".

29 U.S.C.A. § 203, 29 USCA § 203

Current through P.L. 114-115 (excluding 114-94 and 114-95) approved 12-28-2015

United States Code Annotated
Title 29. Labor
Chapter 8. Fair Labor Standards (Refs & Annos)

29 U.S.C.A. § 204

§ 204. Administration

Effective: December 20, 2006
Currentness

(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.

CREDIT(S)

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

29 U.S.C.A. § 204, 29 USCA § 204
Current through P.L. 114-115 (excluding 114-94 and 114-95) approved 12-28-2015

United States Code Annotated
Title 29. Labor
Chapter 8. Fair Labor Standards (Refs & Annos)

29 U.S.C.A. § 206

§ 206. Minimum wage

Effective: August 25, 2007
Currentness

(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.

(5) Redesignated (4)

(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) of this section 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.A. § 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) of this section.

(c) Repealed. Pub.L. 104-188, [Title III], § 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 which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(e) Employees of employers providing contract services to United States

(1) Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof), every employer providing any contract services (other than linen supply services) under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by chapter 67 of Title 41 or to whom subsection (a)(1) of this section is not applicable, wages at rates not less than the rates provided for in subsection (b) of this section.

(2) Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof) and the provisions of chapter 67 of Title 41, every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b) of this section, except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.

(f) Employees in domestic service

Any employee--

(1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under subsection (b) of this section unless such employee's compensation for such service would not because of section 209(a)(6) of the Social Security Act [42 U.S.C.A. § 409(a)(6)] constitute wages for the purposes of title II of such Act [42 U.S.C.A. § 401 et seq.], or

(2) who in any workweek--

(A) is employed in domestic service in one or more households, and

(B) is so employed for more than 8 hours in the aggregate,

shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under subsection (b) of this section.

(g) Newly hired employees who are less than 20 years old

(1) In lieu of the rate prescribed by subsection (a)(1) of this section, any employer may pay any employee of such employer, during the first 90 consecutive calendar days after such employee is initially employed by such employer, a wage which is not less than $4.25 an hour.

(2) No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in paragraph (1).

(3) Any employer who violates this subsection shall be considered to have violated section 215(a)(3) of this title.

(4) This subsection shall only apply to an employee who has not attained the age of 20 years.

CREDIT(S)

(June 25, 1938, c. 676, § 6, 52 Stat. 1062; June 26, 1940, c. 432, § 3(e), (f), 54 Stat. 616; Oct. 26, 1949, c. 736, § 6, 63 Stat. 912; Aug. 12, 1955, c. 867, § 3, 69 Stat. 711; Aug. 8, 1956, c. 1035, § 2, 70 Stat. 1118; May 5, 1961, Pub.L. 87-30, § 5, 75 Stat. 67; June 10, 1963, Pub.L. 88-38, § 3, 77 Stat. 56; Sept. 23, 1966, Pub.L. 89-601, Title III, §§ 301 to 305, 80 Stat. 838, 839, 841; Apr. 8, 1974, Pub.L. 93-259, §§ 2 to 4, 5(b), 7(b)(1), 88 Stat. 55, 56, 62; Nov. 1, 1977, Pub.L. 95-151, § 2(a) to (d)(2), 91 Stat. 1245, 1246; Nov. 17, 1989, Pub.L. 101-157, §§ 2, 4(b), 103 Stat. 938, 940; Dec. 19, 1989, Pub.L. 101-239, Title X, § 10208(d)(2)(B)(i), 103 Stat. 2481; Aug. 20, 1996, Pub.L. 104-188, [Title II], §§ 2104(b), (c), 2105(c), 110 Stat. 1928, 1929; May 25, 2007, Pub.L. 110-28, Title VIII, §§ 8102(a), 8103(c)(1)(B), 121 Stat. 188, 189.)

29 U.S.C.A. § 206, 29 USCA § 206
Current through P.L. 114-115 (excluding 114-94 and 114-95) approved 12-28-2015

End of Document

United States Code Annotated
Title 29. Labor
Chapter 8. Fair Labor Standards (Refs & Annos)

29 U.S.C.A. § 207

§ 207. Maximum hours

Effective: March 23, 2010
Currentness

(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 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 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) of this section 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) of this section 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) Sums [1] 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 performers, 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) of this section 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) of this section, [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) of this section by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) of this section 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) of this section 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 described in paragraphs (1) through (7) of subsection (e) of this section 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) Extra compensation creditable toward overtime compensation

(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 6 or overtime compensation required under this section.

(2) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) of this section 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) of this section 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) of this section 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) of this section 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) of this section.

(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) of this section 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) of this section 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 higher [3]

(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) of this section 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 applicable 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) of this section 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)(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.

CREDIT(S)

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

Footnotes

1 So in original. Probably should not be capitalized.

2 So in original. Probably should have closed parentheses.

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

29 U.S.C.A. § 207, 29 USCA § 207

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United States Code Annotated
Title 29. Labor
Chapter 8. Fair Labor Standards (Refs & Annos)

29 U.S.C.A. § 211

§ 211. Collection of data

Currentness

(a) Investigations and inspections

The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this chapter, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this chapter, or which may aid in the enforcement of the provisions of this chapter. Except as provided in section 212 of this title and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 212 of this title, the Administrator shall bring all actions under section 217 of this title to restrain violations of this chapter.

(b) State and local agencies and employees

With the consent and cooperation of State agencies charged with the administration of State labor laws, the Administrator and the Secretary of Labor may, for the purpose of carrying out their respective functions and duties under this chapter, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may reimburse such State and local agencies and their employees for services rendered for such purposes.

(c) Records

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 207(p)(3) of this title may not be required under this subsection to keep a record of the hours of the substitute work.

(d) Homework regulations

The Administrator is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all existing regulations or orders of the Administrator relating to industrial homework are continued in full force and effect.

CREDIT(S)

(June 25, 1938, c. 676, § 11, 52 Stat. 1066; 1946 Reorg. Plan No. 2, § 1(b), eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Oct. 26, 1949, c. 736, § 9, 63 Stat. 916; Nov. 13, 1985, Pub.L. 99-150, § 3(c)(2), 99 Stat. 789.)

29 U.S.C.A. § 211, 29 USCA § 211
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United States Code Annotated
Title 29. Labor
Chapter 8. Fair Labor Standards (Refs & Annos)

29 U.S.C.A. § 216

§ 216. Penalties

Effective: May 21, 2008
Currentness

(a) Fines and imprisonment

Any person who willfully violates any of the provisions of section 215 of this title shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) of this title.

(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207 of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary

in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in section 255(a) of this title, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

(d) Savings provisions

In any action or proceeding commenced prior to, on, or after August 8, 1956, no employer shall be subject to any liability or punishment under this chapter or the Portal-to-Portal Act of 1947 [29 U.S.C.A. § 251 et seq.] on account of his failure to comply with any provision or provisions of this chapter or such Act (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 213(f) of this title is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section 206(a)(3) of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e)(1)(A) Any person who violates the provisions of sections [1] 212 or 213(c) of this title, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed--

(i) $11,000 for each employee who was the subject of such a violation; or

(ii) $50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

(B) For purposes of subparagraph (A), the term “serious injury” means--

(i) permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(ii) permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

(iii) permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

(2) Any person who repeatedly or willfully violates section 206 or 207, relating to wages, shall be subject to a civil penalty not to exceed $1,100 for each such violation.

(3) In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be--

(A) deducted from any sums owing by the United States to the person charged;

(B) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(C) ordered by the court, in an action brought for a violation of section 215(a)(4) of this title or a repeated or willful violation of section 215(a)(2) of this title, to be paid to the Secretary.

(4) Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of Title 5, and regulations to be promulgated by the Secretary.

(5) Except for civil penalties collected for violations of section 212 of this title, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 9a of this title. Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury.

CREDIT(S)

(June 25, 1938, c. 676, § 16, 52 Stat. 1069; May 14, 1947, c. 52, § 5(a), 61 Stat. 87; Oct. 26, 1949, c. 736, § 14, 63 Stat. 919; 1950 Reorg. Plan No. 6, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263; Aug. 8, 1956, c. 1035, § 4, 70 Stat. 1118; Aug. 30, 1957, Pub.L. 85-231, § 1(2), 71 Stat. 514; May 5, 1961, Pub.L. 87-30, § 12(a), 75 Stat. 74; Sept. 23, 1966, Pub.L. 89-601, Title VI, § 601(a), 80 Stat. 844; Apr. 8, 1974, Pub.L. 93-259, §§ 6(d)(1), 25(c), 26, 88 Stat. 61, 72, 73; Nov. 1, 1977, Pub.L. 95-151, § 10, 91 Stat. 1252; Nov. 17, 1989, Pub.L. 101-157, § 9, 103 Stat. 945; Nov. 5, 1990, Pub.L. 101-508, Title III, § 3103, 104 Stat. 1388-29; Aug. 6, 1996, Pub.L. 104-174, § 2, 110 Stat. 1554; May 21, 2008, Pub.L. 110-233, Title III, § 302(a), 122 Stat. 920.)

Footnotes

1 So in original. Probably should be “section”.

29 U.S.C.A. § 216, 29 USCA § 216

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United States Code Annotated
Title 29. Labor
Chapter 8. Fair Labor Standards (Refs & Annos)

29 U.S.C.A. § 218

§ 218. Relation to other laws

Currentness

(a) No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

(b) Notwithstanding any other provision of this chapter (other than section 213(f) of this title) or any other law--

(1) any Federal employee in the Canal Zone engaged in employment of the kind described in section 5102(c)(7) of Title 5, or

(2) any employee employed in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces,

shall have his basic compensation fixed or adjusted at a wage rate that is not less than the appropriate wage rate provided for in section 206(a)(1) of this title (except that the wage rate provided for in section 206(b) of this title shall apply to any employee who performed services during the workweek in a work place within the Canal Zone), and shall have his overtime compensation set at an hourly rate not less than the overtime rate provided for in section 207(a)(1) of this title.

CREDIT(S)

(June 25, 1938, c. 676, § 18, 52 Stat. 1069; Sept. 23, 1966, Pub.L. 89-601, Title III, § 306, 80 Stat. 841; Sept. 11, 1967, Pub.L. 90-83, § 8, 81 Stat. 222.)

29 U.S.C.A. § 218, 29 USCA § 218
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United States Code Annotated
Title 29. Labor
Chapter 9. Portal-to-Portal Pay

29 U.S.C.A. § 260

§ 260. Liquidated damages

Currentness

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.A. § 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.

CREDIT(S)

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

29 U.S.C.A. § 260, 29 USCA § 260
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United States Code Annotated
Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 18. Longshore and Harbor Workers' Compensation (Refs & Annos)

33 U.S.C.A. § 905

§ 905. Exclusiveness of liability

Currentness

(a) Employer liability; failure of employer to secure payment of compensation

The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee. For purposes of this subsection, a contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by section 904 of this title.

(b) Negligence of vessel

In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter.

(c) Outer Continental Shelf

In the event that the negligence of a vessel causes injury to a person entitled to receive benefits under this Act by virtue of section 1333 of Title 43, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel in accordance with the provisions of subsection (b) of this section. Nothing contained in subsection (b) of this section shall preclude the enforcement according to its terms of any reciprocal indemnity provision whereby the employer of a person entitled to receive benefits under this chapter by virtue of section 1333 of Title 43 and the vessel agree to defend and indemnify the other for cost of defense and loss or liability for damages arising out of or resulting from death or bodily injury to their employees.

CREDIT(S)

(Mar. 4, 1927, c. 509, § 5, 44 Stat. 1426; Oct. 27, 1972, Pub.L. 92-576, § 18(a), 86 Stat. 1263; Sept. 28, 1984, Pub.L. 98-426, §§ 4(b), 5(a)(1), (b), 98 Stat. 1641.)

33 U.S.C.A. § 905, 33 USCA § 905
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Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 18. Longshore and Harbor Workers' Compensation (Refs & Annos)

33 U.S.C.A. § 933

§ 933. Compensation for injuries where third persons are liable

Currentness

(a) Election of remedies

If on account of a disability or death for which compensation is payable under this chapter the person entitled to such compensation determines that some person other than the employer or a person or persons in his employ is liable in damages, he need not elect whether to receive such compensation or to recover damages against such third person.

(b) Acceptance of compensation operating as assignment

Acceptance of compensation under an award in a compensation order filed by the deputy commissioner, an administrative law judge, or the Board shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six months after such acceptance. If the employer fails to commence an action against such third person within ninety days after the cause of action is assigned under this section, the right to bring such action shall revert to the person entitled to compensation. For the purpose of this subsection, the term “award” with respect to a compensation order means a formal order issued by the deputy commissioner, an administrative law judge, or Board.

(c) Payment into section 944 fund operating as assignment

The payment of such compensation into the fund established in section 944 of this title shall operate as an assignment to the employer of all right of the legal representative of the deceased (hereinafter referred to as “representative”) to recover damages against such third person.

(d) Institution of proceedings or compromise by assignee

Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(e) Recoveries by assignee

Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to--

(A) the expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee as determined by the deputy commissioner or Board);

(B) the cost of all benefits actually furnished by him to the employee under section 907 of this title;

(C) all amounts paid as compensation;

(D) the present value of all amounts thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Secretary, and the present value of the cost of all benefits thereafter to be furnished under section 907 of this title, to be estimated by the deputy commissioner, and the amounts so computed and estimated to be retained by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative.

(f) Institution of proceedings by person entitled to compensation

If the person entitled to compensation institutes proceedings within the period prescribed in subsection (b) of this section the employer shall be required to pay as compensation under this chapter a sum equal to the excess of the amount which the Secretary determines is payable on account of such injury or death over the net amount recovered against such third person. Such net amount shall be equal to the actual amount recovered less the expenses reasonably incurred by such person in respect to such proceedings (including reasonable attorneys' fees).

(g) Compromise obtained by person entitled to compensation

(1) If the person entitled to compensation (or the person's representative) enters into a settlement with a third person referred to in subsection (a) of this section for an amount less than the compensation to which the person (or the person's representative) would be entitled under this chapter, the employer shall be liable for compensation as determined under subsection (f) of this section only if written approval of the settlement is obtained from the employer and the employer's carrier, before the settlement is executed, and by the person entitled to compensation (or the person's representative). The approval shall be made on a form provided by the Secretary and shall be filed in the office of the deputy commissioner within thirty days after the settlement is entered into.

(2) If no written approval of the settlement is obtained and filed as required by paragraph (1), or if the employee fails to notify the employer of any settlement obtained from or judgment rendered against a third person, all rights to compensation and medical benefits under this chapter shall be terminated, regardless of whether the employer or the employer's insurer has made payments or acknowledged entitlement to benefits under this chapter.

(3) Any payments by the special fund established under section 944 of this title shall be a lien upon the proceeds of any settlement obtained from or judgment rendered against a third person referred to under subsection (a) of this section. Notwithstanding any other provision of law, such lien shall be enforceable against such proceeds, regardless of whether the Secretary on behalf of the special fund has agreed to or has received actual notice of the settlement or judgment.

(4) Any payments by a trust fund described in section 917 of this title shall be a lien upon the proceeds of any settlement obtained from or judgment recorded against a third person referred to under subsection (a) of this section. Such lien shall have priority over a lien under paragraph (3) of this subsection.

(h) Subrogation

Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer under this section.

(i) Right to compensation as exclusive remedy

The right to compensation or benefits under this chapter shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representatives if he is killed, by the negligence or wrong of any other person or persons in the same employ: *Provided*, That this provision shall not affect the liability of a person other than an officer or employee of the employer.

CREDIT(S)

(Mar. 4, 1927, c. 509, § 33, 44 Stat. 1440; June 25, 1938, c. 685, §§ 12, 13, 52 Stat. 1168; Aug. 18, 1959, Pub.L. 86-171, 73 Stat. 391; Oct. 27, 1972, Pub.L. 92-576, § 15(f)-(h), 86 Stat. 1262; Sept. 28, 1984, Pub.L. 98-426, § 21, 98 Stat. 1652.)

33 U.S.C.A. § 933, 33 USCA § 933
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Title 33. Navigation and Navigable Waters (Refs & Annos)
Chapter 18. Longshore and Harbor Workers' Compensation (Refs & Annos)

33 U.S.C.A. § 948a

§ 948a. Discrimination against employees who bring proceedings; penalties; deposit of payments in special fund; civil actions; entitlement to restoration of employment and compensation, qualifications requirement; liability of employer for penalties and payments; insurance policy exemption from liability

Currentness

It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he has testified or is about to testify in a proceeding under this chapter. The discharge or refusal to employ a person who has been adjudicated to have filed a fraudulent claim for compensation is not a violation of this section. Any employer who violates this section shall be liable to a penalty of not less than $1,000 or more than $5,000, as may be determined by the deputy commissioner. All such penalties shall be paid to the deputy commissioner for deposit in the special fund as described in section 944 of this title, and if not paid may be recovered in a civil action brought in the appropriate United States district court. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination: *Provided,* That if such employee shall cease to be qualified to perform the duties of his employment, he shall not be entitled to such restoration and compensation. The employer alone and not his carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from the liability for such penalties and payments shall be void.

CREDIT(S)

(Mar. 4, 1927, c. 509, § 49, as added Oct. 27, 1972, Pub.L. 92-576, § 19, 86 Stat. 1263; amended Sept. 28, 1984, Pub.L. 98-426, § 26, 98 Stat. 1654.)

33 U.S.C.A. § 948a, 33 USCA § 948a
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United States Code Annotated
Title 43. Public Lands (Refs & Annos)
Chapter 29. Submerged Lands
Subchapter III. Outer Continental Shelf Lands (Refs & Annos)

43 U.S.C.A. § 1331

§ 1331. Definitions

Currentness

When used in this subchapter--

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

(b) The term "Secretary" means the Secretary of the Interior, except that with respect to functions under this subchapter transferred to, or vested in, the Secretary of Energy or the Federal Energy Regulatory Commission by or pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), the term "Secretary" means the Secretary of Energy, or the Federal Energy Regulatory Commission, as the case may be;

(c) The term "lease" means any form of authorization which is issued under section 1337 of this title or maintained under section 1335 of this title and which authorizes exploration for, and development and production of, minerals;

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation;

(e) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 1454(b)(1) of Title 16;

(f) The term "affected State" means, with respect to any program, plan, lease [1] sale, or other activity, proposed, conducted, or approved pursuant to the provisions of this subchapter, any State--

(1) the laws of which are declared, pursuant to section 1333(a)(2) of this title, to be the law of the United States for the portion of the outer Continental Shelf on which such activity is, or is proposed to be, conducted;

(2) which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 1333(a)(1) of this title;

(3) which is receiving, or in accordnace [2] with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the outer Continental Shelf; or

(5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

(g) The term “marine environment” means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the outer Continental Shelf;

(h) The term “coastal environment” means the physical atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

(i) The term “human environment” means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf;

(j) The term “Governor” means the Governor of a State, or the person or entity designated by, or pursuant to, State law to exercise the powers granted to such Governor pursuant to this subchapter;

(k) The term “exploration” means the process of searching for minerals, including (1) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals, and (2) any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling of any additional delineation well after such discovery which is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production;

(l) The term “development” means those activities which take place following discovery of minerals in paying quantities, including geophysical activity, drilling, platform construction, and operation of all onshore support facilities, and which are for the purpose of ultimately producing the minerals discovered;

(m) The term "production" means those activities which take place after the successful completion of any means for the removal of minerals, including such removal, field operations, transfer of minerals to shore, operation monitoring, maintenance, and work-over drilling;

(n) The term "antitrust law" means--

(1) the Sherman Act (15 U.S.C. 1 et seq.);

(2) the Clayton Act (15 U.S.C. 12 et seq.);

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(4) the Wilson Tariff Act (15 U.S.C. 8 et seq.); or

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a);

(o) The term "fair market value" means the value of any mineral (1) computed at a unit price equivalent to the average unit price at which such mineral was sold pursuant to a lease during the period for which any royalty or net profit share is accrued or reserved to the United States pursuant to such lease, or (2) if there were no such sales, or if the Secretary finds that there were an insufficient number of such sales to equitably determine such value, computed at the average unit price at which such mineral was sold pursuant to other leases in the same region of the outer Continental Shelf during such period, or (3) if there were no sales of such mineral from such region during such period, or if the Secretary finds that there are an insufficient number of such sales to equitably determine such value, at an appropriate price determined by the Secretary;

(p) The term "major Federal action" means any action or proposal by the Secretary which is subject to the provisions of section 4332(2)(C) of Title 42; and

(q) The term "minerals" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from "public lands" as defined in section 1702 of this title.

CREDIT(S)

(Aug. 7, 1953, c. 345, § 2, 67 Stat. 462; Sept. 18, 1978, Pub.L. 95-372, Title II, § 201, 92 Stat. 632.)

Footnotes

1 So in original.

2 So in original. Probably should be "accordance".

43 U.S.C.A. § 1331, 43 USCA § 1331

Current through P.L. 114-115 (excluding 114-94 and 114-95) approved 12-28-2015

End of Document

United States Code Annotated
Title 43. Public Lands (Refs & Annos)
Chapter 29. Submerged Lands
Subchapter III. Outer Continental Shelf Lands (Refs & Annos)

43 U.S.C.A. § 1333

§ 1333. Laws and regulations governing lands

Currentness

(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; international boundary disputes; restriction on State taxation and jurisdiction

(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however*, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2)(A) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after September 18, 1978, the President shall establish procedures for setting [1] any outstanding international boundary dispute respecting the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(b) Longshore and Harbor Workers' Compensation Act applicable; definitions

With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshore and Harbor Workers' Compensation Act [33 U.S.C.A. § 901 et seq.]. For the purposes of the extension of the provisions of the Longshore and Harbor Workers' Compensation Act under this section--

(1) the term “employee” does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term “employer” means an employer any of whose employees are employed in such operations; and

(3) the term “United States” when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

(c) National Labor Relations Act applicable

For the purposes of the National Labor Relations Act, as amended [29 U.S.C.A. § 151 et seq.], any unfair labor practice, as defined in such Act, occurring upon any artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device.

(d) Coast Guard regulations; marking of artificial islands, installations, and other devices; failure of owner suitably to mark according to regulations

(1) The Secretary of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary.

(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) of this section whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this subchapter, and the owner shall pay the cost of such marking.

(e) Authority of Secretary of the Army to prevent obstruction to navigation

The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to the artificial islands, installations, and other devices referred to in subsection (a) of this section.

(f) Provisions as nonexclusive

The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

CREDIT(S)

(Aug. 7, 1953, c. 345, § 4, 67 Stat. 462; Jan. 3, 1975, Pub.L. 93-627, § 19(f), 88 Stat. 2146; Sept. 18, 1978, Pub.L. 95-372, Title II, § 203, 92 Stat. 635; Sept. 28, 1984, Pub.L. 98-426, § 27(d)(2), 98 Stat. 1654.)

Footnotes

1 So in original. Probably should be “settling”.

43 U.S.C.A. § 1333, 43 USCA § 1333

Current through P.L. 114-115 (excluding 114-94 and 114-95) approved 12-28-2015

End of Document

United States Code Annotated
Title 43. Public Lands (Refs & Annos)
Chapter 29. Submerged Lands
Subchapter III. Outer Continental Shelf Lands (Refs & Annos)

43 U.S.C.A. § 1337

§ 1337. Leases, easements, and right-of-way on the outer Continental Shelf

Effective: August 8, 2005
Currentness

(a) Oil and gas leases; award to highest responsible qualified bidder; method of bidding; royalty relief; Congressional consideration of bidding system; notice

(1) The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the outer Continental Shelf which are not covered by leases meeting the requirements of subsection (a) of section 1335 of this title. Such regulations may provide for the deposit of cash bids in an interest-bearing account until the Secretary announces his decision on whether to accept the bids, with the interest earned thereon to be paid to the Treasury as to bids that are accepted and to the unsuccessful bidders as to bids that are rejected. The bidding shall be by sealed bid and, at the discretion of the Secretary, on the basis of--

(A) cash bonus bid with a royalty at not less than 12 ½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold;

(B) variable royalty bid based on a per centum in amount or value of the production saved, removed, or sold, with either a fixed work commitment based on dollar amount for exploration or a fixed cash bonus as determined by the Secretary, or both;

(C) cash bonus bid, or work commitment bid based on a dollar amount for exploration with a fixed cash bonus, and a diminishing or sliding royalty based on such formulae as the Secretary shall determine as equitable to encourage continued production from the lease area as resources diminish, but not less than 12 ½ per centum at the beginning of the lease period in amount or value of the production saved, removed, or sold;

(D) cash bonus bid with a fixed share of the net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

(E) fixed cash bonus with the net profit share reserved as the bid variable;

(F) cash bonus bid with a royalty at no less than 12 ½ per centum fixed by the Secretary in amount or value of the production saved, removed, or sold and a fixed per centum share of net profits of no less than 30 per centum to be derived from the production of oil and gas from the lease area;

(G) work commitment bid based on a dollar amount for exploration with a fixed cash bonus and a fixed royalty in amount or value of the production saved, removed, or sold;

(H) cash bonus bid with royalty at no less than 12 and ½ per centum fixed by the Secretary in amount or value of production saved, removed, or sold, and with suspension of royalties for a period, volume, or value of production determined by the Secretary, which suspensions may vary based on the price of production from the lease; or

(I) subject to the requirements of paragraph (4) of this subsection, any modification of bidding systems authorized in subparagraphs (A) through (G), or any other systems of bid variables, terms, and conditions which the Secretary determines to be useful to accomplish the purposes and policies of this subchapter, except that no such bidding system or modification shall have more than one bid variable.

(2) The Secretary may, in his discretion, defer any part of the payment of the cash bonus, as authorized in paragraph (1) of this subsection, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years after the date of the lease sale.

(3)(A) The Secretary may, in order to promote increased production on the lease area, through direct, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease for such area.

(B) In the Western and Central Planning Areas of the Gulf of Mexico and the portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude and in the Planning Areas offshore Alaska, the Secretary may, in order to--

(i) promote development or increased production on producing or non-producing leases; or

(ii) encourage production of marginal resources on producing or non-producing leases;

through primary, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease(s). With the lessee's consent, the Secretary may make other modifications to the royalty or net profit share terms of the lease in order to achieve these purposes.

(C)(i) Notwithstanding the provisions of this subchapter other than this subparagraph, with respect to any lease or unit in existence on November 28, 1995, meeting the requirements of this subparagraph, no royalty payments shall be due on new production, as defined in clause (iv) of this subparagraph, from any lease or unit located in water depths of 200 meters or greater in the Western and Central Planning Areas of the Gulf of Mexico, including that portion of the Eastern Planning Area of the Gulf of Mexico encompassing whole lease blocks lying west of 87 degrees, 30 minutes West longitude, until such volume of production as determined pursuant to clause (ii) has been produced by the lessee.

(ii) Upon submission of a complete application by the lessee, the Secretary shall determine within 180 days of such application whether new production from such lease or unit would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph. In making such determination, the Secretary shall consider the increased technological and financial risk of deep water development and all costs associated with exploring, developing, and

producing from the lease. The lessee shall provide information required for a complete application to the Secretary prior to such determination. The Secretary shall clearly define the information required for a complete application under this section. Such application may be made on the basis of an individual lease or unit. If the Secretary determines that such new production would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph, the provisions of clause (i) shall not apply to such production. If the Secretary determines that such new production would not be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i), the Secretary must determine the volume of production from the lease or unit on which no royalties would be due in order to make such new production economically viable; except that for new production as defined in clause (iv)(I), in no case will that volume be less than 17.5 million barrels of oil equivalent in water depths of 200 to 400 meters, 52.5 million barrels of oil equivalent in 400-800 meters of water, and 87.5 million barrels of oil equivalent in water depths greater than 800 meters. Redetermination of the applicability of clause (i) shall be undertaken by the Secretary when requested by the lessee prior to the commencement of the new production and upon significant change in the factors upon which the original determination was made. The Secretary shall make such redetermination within 120 days of submission of a complete application. The Secretary may extend the time period for making any determination or redetermination under this clause for 30 days, or longer if agreed to by the applicant, if circumstances so warrant. The lessee shall be notified in writing of any determination or redetermination and the reasons for and assumptions used for such determination. Any determination or redetermination under this clause shall be a final agency action. The Secretary's determination or redetermination shall be judicially reviewable under section 702 of Title 5, only for actions filed within 30 days of the Secretary's determination or redetermination.

(iii) In the event that the Secretary fails to make the determination or redetermination called for in clause (ii) upon application by the lessee within the time period, together with any extension thereof, provided for by clause (ii), no royalty payments shall be due on new production as follows:

(I) For new production, as defined in clause (iv)(I) of this subparagraph, no royalty shall be due on such production according to the schedule of minimum volumes specified in clause (ii) of this subparagraph.

(II) For new production, as defined in clause (iv)(II) of this subparagraph, no royalty shall be due on such production for one year following the start of such production.

(iv) For purposes of this subparagraph, the term “new production” is--

(I) any production from a lease from which no royalties are due on production, other than test production, prior to November 28, 1995; or

(II) any production resulting from lease development activities pursuant to a Development Operations Coordination Document, or supplement thereto that would expand production significantly beyond the level anticipated in the Development Operations Coordination Document, approved by the Secretary after November 28, 1995.

(v) During the production of volumes determined pursuant to clauses [1] (ii) or (iii) of this subparagraph, in any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for light sweet crude oil exceeds $28.00 per barrel, any production of oil will be subject to royalties at the lease stipulated royalty rate. Any production subject to this clause shall be counted toward the production volume determined pursuant to clause (ii) or (iii). Estimated royalty payments will be made if such average of the closing prices for the previous year exceeds $28.00. After the end of the calendar year,

when the new average price can be calculated, lessees will pay any royalties due, with interest but without penalty, or can apply for a refund, with interest, of any overpayment.

(vi) During the production of volumes determined pursuant to clause (ii) or (iii) of this subparagraph, in any year during which the arithmetic average of the closing prices on the New York Mercantile Exchange for natural gas exceeds $3.50 per million British thermal units, any production of natural gas will be subject to royalties at the lease stipulated royalty rate. Any production subject to this clause shall be counted toward the production volume determined pursuant to clauses [1] (ii) or (iii). Estimated royalty payments will be made if such average of the closing prices for the previous year exceeds $3.50. After the end of the calendar year, when the new average price can be calculated, lessees will pay any royalties due, with interest but without penalty, or can apply for a refund, with interest, of any overpayment.

(vii) The prices referred to in clauses (v) and (vi) of this subparagraph shall be changed during any calendar year after 1994 by the percentage, if any, by which the implicit price deflator for the gross domestic product changed during the preceding calendar year.

(4)(A) The Secretary of Energy shall submit any bidding system authorized in subparagraph (H) of paragraph (1) to the Senate and House of Representatives. The Secretary may institute such bidding system unless either the Senate or the House of Representatives passes a resolution of disapproval within thirty days after receipt of the bidding system.

(B) Subparagraphs (C) through (J) of this paragraph are enacted by Congress--

(i) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but they are applicable only with respect to the procedures to be followed in that House in the case of resolutions described by this paragraph, and they supersede other rules only to the extent that they are inconsistent therewith; and

(ii) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(C) A resolution disapproving a bidding system submitted pursuant to this paragraph shall immediately be referred to a committee (and all resolutions with respect to the same request shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(D) If the committee to which has been referred any resolution disapproving the bidding system of the Secretary has not reported the resolution at the end of ten calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the same bidding system which has been referred to the committee.

(E) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same recommendation), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution.

An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(F) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same bidding system.

(G) When the committee has reported, or has been discharged from further consideration of, a resolution as provided in this paragraph, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(H) Debate on the resolution is limited to not more than two hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(I) Motions to postpone, made with respect to the discharge from the committee, or the consideration of a resolution with respect to a bidding system, and motions to proceed to the consideration of other business, shall be decided without debate.

(J) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a bidding system shall be decided without debate.

(5)(A) During the five-year period commencing on September 18, 1978, the Secretary may, in order to obtain statistical information to determine which bidding alternatives will best accomplish the purposes and policies of this subchapter, require, as to no more than 10 per centum of the tracts offered each year, each bidder to submit bids for any area of the outer Continental Shelf in accordance with more than one of the bidding systems set forth in paragraph (1) of this subsection. For such statistical purposes, leases may be awarded using a bidding alternative selected at random for the acquisition of valid statistical data if such bidding alternative is otherwise consistent with the provisions of this subchapter.

(B) The bidding systems authorized by paragraph (1) of this subsection, other than the system authorized by subparagraph (A), shall be applied to not less than 20 per centum and not more than 60 per centum of the total area offered for leasing each year during the five-year period beginning on September 18, 1978, unless the Secretary determines that the requirements set forth in this subparagraph are inconsistent with the purposes and policies of this subchapter.

(6) At least ninety days prior to notice of any lease sale under subparagraph (D), (E), (F), or, if appropriate, (H) of paragraph (1), the Secretary shall by regulation establish rules to govern the calculation of net profits. In the event of any dispute between the United States and a lessee concerning the calculation of the net profits under the regulation issued pursuant to this paragraph, the burden of proof shall be on the lessee.

(7) After an oil and gas lease is granted pursuant to any of the work commitment options of paragraph (1) of this subsection--

(A) the lessee, at its option, shall deliver to the Secretary upon issuance of the lease either (i) a cash deposit for the full amount of the exploration work commitment, or (ii) a performance bond in form and substance and with a surety satisfactory to the Secretary, in the principal amount of such exploration work commitment assuring the Secretary that such commitment shall be faithfully discharged in accordance with this section, regulations, and the lease; and for purposes of this subparagraph, the principal amount of such cash deposit or bond may, in accordance with regulations, be periodically reduced upon proof, satisfactory to the Secretary, that a portion of the exploration work commitment has been satisfied;

(B) 50 per centum of all exploration expenditures on, or directly related to, the lease, including, but not limited to (i) geological investigations and related activities, (ii) geophysical investigations including seismic, geomagnetic, and gravity surveys, data processing and interpretation, and (iii) exploratory drilling, core drilling, redrilling, and well completion or abandonment, including the drilling of wells sufficient to determine the size and a real extent of any newly discovered field, and including the cost of mobilization and demobilization of drilling equipment, shall be included in satisfaction of the commitment, except that the lessee's general overhead cost shall not be so included against the work commitment, but its cost (including employee benefits) of employees directly assigned to such exploration work shall be so included; and

(C) if at the end of the primary term of the lease, including any extension thereof, the full dollar amount of the exploration work commitment has not been satisfied, the balance shall then be paid in cash to the Secretary.

(8) Not later than thirty days before any lease sale, the Secretary shall submit to the Congress and publish in the Federal Register a notice--

(A) identifying any bidding system which will be utilized for such lease sale and the reasons for the utilization of such bidding system; and

(B) designating the lease tracts selected which are to be offered in such sale under the bidding system authorized by subparagraph (A) of paragraph (1) and the lease tracts selected which are to be offered under any one or more of the bidding systems authorized by subparagraphs (B) through (H) of paragraph (1), and the reasons such lease tracts are to be offered under a particular bidding system.

(b) Terms and provisions of oil and gas leases

An oil and gas lease issued pursuant to this section shall--

(1) be for a tract consisting of a compact area not exceeding five thousand seven hundred and sixty acres, as the Secretary may determine, unless the Secretary finds that a larger area is necessary to comprise a reasonable economic production unit;

(2) be for an initial period of--

(A) five years; or

(B) not to exceed ten years where the Secretary finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions,

and as long after such initial period as oil or gas is produced from the area in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted thereon;

(3) require the payment of amount or value as determined by one of the bidding systems set forth in subsection (a) of this section;

(4) entitle the lessee to explore, develop, and produce the oil and gas contained within the lease area, conditioned upon due diligence requirements and the approval of the development and production plan required by this subchapter;

(5) provide for suspension or cancellation of the lease during the initial lease term or thereafter pursuant to section 1334 of this title;

(6) contain such rental and other provisions as the Secretary may prescribe at the time of offering the area for lease; and

(7) provide a requirement that the lessee offer 20 per centum of the crude oil, condensate, and natural gas liquids produced on such lease, at the market value and point of delivery applicable to Federal royalty oil, to small or independent refiners as defined in the Emergency Petroleum Allocation Act of 1973 [15 U.S.C.A. § 751 et seq.].

(c) Antitrust review of lease sales

(1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary shall allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

(2) The Attorney General may, in consultation with the Federal Trade Commission, conduct such antitrust review on the likely effects the issuance of such leases would have on competition as the Attorney General, after consultation with the Federal Trade Commission, deems appropriate and shall advise the Secretary with respect to such review. The Secretary shall provide such information as the Attorney General, after consultation with the Federal Trade Commission, may require in order to conduct any antitrust review pursuant to this paragraph and to make recommendations pursuant to paragraph (3) of this subsection.

(3) The Attorney General, after consultation with the Federal Trade Commission, may make such recommendations to the Secretary, including the nonacceptance of any bid, as may be appropriate to prevent any situation inconsistent with the antitrust laws. If the Secretary determines, or if the Attorney General advises the Secretary, after consultation with the Federal Trade Commission and prior to the issuance of any lease, that such lease may create or maintain a situation inconsistent with the antitrust laws, the Secretary may--

(A) refuse (i) to accept an otherwise qualified bid for such lease, or (ii) to issue such lease, notwithstanding subsection (a) of this section; or

(B) issue such lease, and notify the lessee and the Attorney General of the reason for such decision.

(4)(A) Nothing in this subsection shall restrict the power under any other Act or the common law of the Attorney General, the Federal Trade Commission, or any other Federal department or agency to secure information, conduct reviews, make recommendations, or seek appropriate relief.

(B) Neither the issuance of a lease nor anything in this subsection shall modify or abridge any private right of action under the antitrust laws.

(d) Due diligence

No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other leases.

(e) Secretary's approval for sale, exchange, assignment, or other transfer of leases

No lease issued under this subchapter may be sold, exchanged, assigned, or otherwise transferred except with the approval of the Secretary. Prior to any such approval, the Secretary shall consult with and give due consideration to the views of the Attorney General.

(f) Antitrust immunity or defenses

Nothing in this subchapter shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(g) Leasing of lands within three miles of seaward boundaries of coastal States; deposit of revenues; distribution of revenues

(1) At the time of soliciting nominations for the leasing of lands containing tracts wholly or partially within three nautical miles of the seaward boundary of any coastal State, and subsequently as new information is obtained or developed by the Secretary, the Secretary shall, in addition to the information required by section 1352 of this title, provide the Governor of such State--

(A) an identification and schedule of the areas and regions proposed to be offered for leasing;

(B) at the request of the Governor of such State, all information from all sources concerning the geographical, geological, and ecological characteristics of such tracts;

(C) an estimate of the oil and gas reserves in the areas proposed for leasing; and

(D) at the request of the Governor of such State, an identification of any field, geological structure, or trap located wholly or partially within three nautical miles of the seaward boundary of such coastal State, including all information relating to the entire field, geological structure, or trap.

The provisions of the first sentence of subsection (c) and the provisions of subsections (e)--(h) of section 1352 of this title shall be applicable to the release by the Secretary of any information to any coastal State under this paragraph. In addition, the provisions of subsections (c) and (e)--(h) of section 1352 of this title shall apply in their entirety to the release by the Secretary to any coastal State of any information relating to Federal lands beyond three nautical miles of the seaward boundary of such coastal State.

(2) Notwithstanding any other provision of this subchapter, the Secretary shall deposit into a separate account in the Treasury of the United States all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1) of this section), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978 of any Federal tract which lies wholly (or, in the case of Alaska, partially [2] until seven years from the date of settlement of any boundary dispute that is the subject of an agreement under section 1336 of this title entered into prior to January 1, 1986 or until April 15, 1993 with respect to any other tract) within three nautical miles of the seaward boundary of any coastal State, or, (except as provided above for Alaska) in the case where a Federal tract lies partially within three nautical miles of the seaward boundary, a percentage of bonuses, rents, royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1) of this section), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978 of such tract equal to the percentage of surface acreage of the tract that lies within such three nautical miles. Except as provided in paragraph (5) of this subsection, not later than the last business day of the month following the month in which those revenues are deposited in the Treasury, the Secretary shall transmit to such coastal State 27 percent of those revenues, together with all accrued interest thereon. The remaining balance of such revenues shall be transmitted simultaneously to the miscellaneous receipts account of the Treasury of the United States.

(3) Whenever the Secretary or the Governor of a coastal State determines that a common potentially hydrocarbon-bearing area may underlie the Federal and State boundary, the Secretary or the Governor shall notify the other party in writing of his determination and the Secretary shall provide to the Governor notice of the current and projected status of the tract or tracts containing the common potentially hydrocarbon-bearing area. If the Secretary has leased or intends to lease such tract or tracts, the Secretary and the Governor of the coastal State may enter into an agreement to divide the revenues from production of any common potentially hydrocarbon-bearing area, by unitization or other royalty sharing agreement, pursuant to existing law. If the Secretary and the Governor do not enter into an agreement, the Secretary may nevertheless proceed with the leasing of the tract or tracts. Any revenues received by the United States under such an agreement shall be subject to the requirements of paragraph (2).

(4) The deposits in the Treasury account described in this section shall be invested by the Secretary of the Treasury in securities backed by the full faith and credit of the United States having maturities suitable to the needs of the account and yielding the highest reasonably available interest rates as determined by the Secretary of the Treasury.

(5)(A) When there is a boundary dispute between the United States and a State which is subject to an agreement under section 1336 of this title, the Secretary shall credit to the account established pursuant to such agreement all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1) of this section), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978 of any Federal tract which lies wholly or partially within three nautical miles of the seaward boundary asserted by the State, if that money has not otherwise

been deposited in such account. Proceeds of an escrow account established pursuant to an agreement under section 1336 of this title shall be distributed as follows:

(i) Twenty-seven percent of all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1) of this section), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978, of any tract which lies wholly within three nautical miles of the seaward boundary asserted by the Federal Government in the boundary dispute, together with all accrued interest thereon, shall be paid to the State either--

(I) within thirty days of December 1, 1987, or

(II) by the last business day of the month following the month in which those revenues are deposited in the Treasury, whichever date is later.

(ii) Upon the settlement of a boundary dispute which is subject to a section 1336 of this title agreement between the United States and a State, the Secretary shall pay to such State any additional moneys due such State from amounts deposited in the escrow account. If there is insufficient money deposited in or credited to the escrow account, the Secretary shall transmit, from any revenues derived from any lease of Federal lands under this subchapter, the remaining balance due such State in accordance with the formula set forth in section 8004(b)(1)(B) of the Outer Continental Shelf Lands Act Amendments of 1985.

(B) This paragraph applies to all Federal oil and gas lease sales, under this subchapter, including joint lease sales, occurring after September 18, 1978.

(6) This section shall be deemed to take effect on October 1, 1985, for purposes of determining the amounts to be deposited in the separate account and the States' shares described in paragraph (2).

(7) When the Secretary leases any tract which lies wholly or partially within three miles of the seaward boundary of two or more States, the revenues from such tract shall be distributed as otherwise provided by this section, except that the State's share of such revenues that would otherwise result under this section shall be divided equally among such States.

(h) State claims to jurisdiction over submerged lands

Nothing contained in this section shall be construed to alter, limit, or modify any claim of any State to any jurisdiction over, or any right, title, or interest in, any submerged lands.

(i) Sulphur leases; award to highest bidder; method of bidding

In order to meet the urgent need for further exploration and development of the sulphur deposits in the submerged lands of the outer Continental Shelf, the Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding sulphur leases on submerged lands of the outer Continental Shelf, which are not covered by leases which include sulphur and meet the requirements of section 1335(a) of this title, and which sulphur leases shall be offered for bid by sealed bids and granted on separate leases from oil and gas leases, and for a separate consideration, and without priority or preference accorded to oil and gas lessees on the same area.

(j) Terms and provisions of sulphur leases

A sulphur lease issued by the Secretary pursuant to this section shall (1) cover an area of such size and dimensions as the Secretary may determine, (2) be for a period of not more than ten years and so long thereafter as sulphur may be produced from the area in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon, (3) require the payment to the United States of such royalty as may be specified in the lease but not less than 5 per centum of the gross production or value of the sulphur at the wellhead, and (4) contain such rental provisions and such other terms and provisions as the Secretary may by regulation prescribe at the time of offering the area for lease.

(k) Other mineral leases; award to highest bidder; terms and conditions; agreements for use of resources for shore protection, beach or coastal wetlands restoration, or other projects

(1) The Secretary is authorized to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

(2)(A) Notwithstanding paragraph (1), the Secretary may negotiate with any person an agreement for the use of Outer Continental Shelf sand, gravel and shell resources--

(i) for use in a program of, or project for, shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency; or

(ii) for use in a construction project, other than a project described in clause (i), that is funded in whole or in part by or authorized by the Federal Government.

(B) In carrying out a negotiation under this paragraph, the Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. No fee shall be assessed directly or indirectly under this subparagraph against a Federal, State, or local government agency.

(C) The Secretary may, through this paragraph and in consultation with the Secretary of Commerce, seek to facilitate projects in the coastal zone, as such term is defined in section 1453 of Title 16, that promote the policy set forth in section 1452 of Title 16.

(D) Any Federal agency which proposes to make use of sand, gravel and shell resources subject to the provisions of this subchapter shall enter into a Memorandum of Agreement with the Secretary concerning the potential use of those resources. The Secretary shall notify the Committee on Merchant Marine and Fisheries and the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on any proposed project for the use of those resources prior to the use of those resources.

(l) Publication of notices of sale and terms of bidding

Notice of sale of leases, and the terms of bidding, authorized by this section shall be published at least thirty days before the date of sale in accordance with rules and regulations promulgated by the Secretary.

(m) Disposition of revenues

All moneys paid to the Secretary for or under leases granted pursuant to this section shall be deposited in the Treasury in accordance with section 1338 of this title.

(n) Issuance of lease as nonprejudicial to ultimate settlement or adjudication of controversies

The issuance of any lease by the Secretary pursuant to this subchapter, or the making of any interim arrangements by the Secretary pursuant to section 1336 of this title shall not prejudice the ultimate settlement or adjudication of the question as to whether or not the area involved is in the outer Continental Shelf.

(o) Cancellation of leases for fraud

The Secretary may cancel any lease obtained by fraud or misrepresentation.

(p) Leases, easements, or rights-of-way for energy and related purposes

(1) In general

The Secretary, in consultation with the Secretary of the Department in which the Coast Guard is operating and other relevant departments and agencies of the Federal Government, may grant a lease, easement, or right-of-way on the outer Continental Shelf for activities not otherwise authorized in this subchapter, the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), the Ocean Thermal Energy Conversion Act of 1980 (42 U.S.C. 9101 et seq.), or other applicable law, if those activities--

(A) support exploration, development, production, or storage of oil or natural gas, except that a lease, easement, or right-of-way shall not be granted in an area in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium;

(B) support transportation of oil or natural gas, excluding shipping activities;

(C) produce or support production, transportation, or transmission of energy from sources other than oil and gas; or

(D) use, for energy-related purposes or for other authorized marine-related purposes, facilities currently or previously used for activities authorized under this subchapter, except that any oil and gas energy-related uses shall not be authorized in areas in which oil and gas preleasing, leasing, and related activities are prohibited by a moratorium.

(2) Payments and revenues

(A) The Secretary shall establish royalties, fees, rentals, bonuses, or other payments to ensure a fair return to the United States for any lease, easement, or right-of-way granted under this subsection.

(B) The Secretary shall provide for the payment of 27 percent of the revenues received by the Federal Government as a result of payments under this section from projects that are located wholly or partially within the area extending three nautical miles seaward of State submerged lands. Payments shall be made based on a formula established by the Secretary by rulemaking no later than 180 days after August 8, 2005, that provides for equitable distribution, based on proximity to the project, among coastal states that have a coastline that is located within 15 miles of the geographic center of the project.

(3) Competitive or noncompetitive basis

Except with respect to projects that meet the criteria established under section 388(d) of the Energy Policy Act of 2005, the Secretary shall issue a lease, easement, or right-of-way under paragraph (1) on a competitive basis unless the Secretary determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest.

(4) Requirements

The Secretary shall ensure that any activity under this subsection is carried out in a manner that provides for--

(A) safety;

(B) protection of the environment;

(C) prevention of waste;

(D) conservation of the natural resources of the outer Continental Shelf;

(E) coordination with relevant Federal agencies;

(F) protection of national security interests of the United States;

(G) protection of correlative rights in the outer Continental Shelf;

(H) a fair return to the United States for any lease, easement, or right-of-way under this subsection;

(I) prevention of interference with reasonable uses (as determined by the Secretary) of the exclusive economic zone, the high seas, and the territorial seas;

(J) consideration of--

(i) the location of, and any schedule relating to, a lease, easement, or right-of-way for an area of the outer Continental Shelf; and

(ii) any other use of the sea or seabed, including use for a fishery, a sealane, a potential site of a deepwater port, or navigation;

(K) public notice and comment on any proposal submitted for a lease, easement, or right-of-way under this subsection; and

(L) oversight, inspection, research, monitoring, and enforcement relating to a lease, easement, or right-of-way under this subsection.

(5) Lease duration, suspension, and cancellation

The Secretary shall provide for the duration, issuance, transfer, renewal, suspension, and cancellation of a lease, easement, or right-of-way under this subsection.

(6) Security

The Secretary shall require the holder of a lease, easement, or right-of-way granted under this subsection to--

(A) furnish a surety bond or other form of security, as prescribed by the Secretary;

(B) comply with such other requirements as the Secretary considers necessary to protect the interests of the public and the United States; and

(C) provide for the restoration of the lease, easement, or right-of-way.

(7) Coordination and consultation with affected State and local Governments

The Secretary shall provide for coordination and consultation with the Governor of any State or the executive of any local government that may be affected by a lease, easement, or right-of-way under this subsection.

(8) Regulations

Not later than 270 days after August 8, 2005, the Secretary, in consultation with the Secretary of Defense, the Secretary of the Department in which the Coast Guard is operating, the Secretary of Commerce, heads of other relevant departments and agencies of the Federal Government, and the Governor of any affected State, shall issue any necessary regulations to carry out this subsection.

(9) Effect of subsection

Nothing in this subsection displaces, supersedes, limits, or modifies the jurisdiction, responsibility, or authority of any Federal or State agency under any other Federal law.

(10) Applicability

This subsection does not apply to any area on the outer Continental Shelf within the exterior boundaries of any unit of the National Park System, National Wildlife Refuge System, or National Marine Sanctuary System, or any National Monument.

CREDIT(S)

(Aug. 7, 1953, c. 345, § 8, 67 Stat. 468; Sept. 18, 1978, Pub.L. 95-372, Title II, § 205(a), (b), 92 Stat. 640, 644; Apr. 7, 1986, Pub.L. 99-272, Title VIII, § 8003, 100 Stat. 148; Dec. 22, 1987, Pub.L. 100-202, § 101(g)[Title I], 101 Stat. 1329-225; Oct. 31, 1994, Pub.L. 103-426, § 1(a), 108 Stat. 4371; Nov. 28, 1995, Pub.L. 104-58, Title III, §§ 302, 303, 109 Stat. 563, 565; Nov. 10, 1998, Pub.L. 105-362, Title IX, § 901(k), 112 Stat. 3290; Aug. 17, 1999, Pub.L. 106-53, Title II, § 215(b)(1), 113 Stat. 292; Aug. 8, 2005, Pub.L. 109-58, Title III, §§ 346, 388(a), (c), 119 Stat. 704, 744, 747.)

Footnotes

1 So in original. Probably should be “clause”.

2 So in original.

43 U.S.C.A. § 1337, 43 USCA § 1337

Current through P.L. 114-115 (excluding 114-94 and 114-95) approved 12-28-2015

End of Document

United States Code Annotated
Title 43. Public Lands (Refs & Annos)
Chapter 29. Submerged Lands
Subchapter III. Outer Continental Shelf Lands (Refs & Annos)

43 U.S.C.A. § 1349

§ 1349. Citizens suits, jurisdiction and judicial review

Currentness

(a) Persons who may bring actions; persons against whom action may be brought; time of action; intervention by Attorney General; costs and fees; security

(1) Except as provided in this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this subchapter against any person, including the United States, and any other government instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution) for any alleged violation of any provision of this subchapter or any regulation promulgated under this subchapter, or of the terms of any permit or lease issued by the Secretary under this subchapter.

(2) Except as provided in paragraph (3) of this subsection, no action may be commenced under subsection (a)(1) of this section--

(A) prior to sixty days after the plaintiff has given notice of the alleged violation, in writing under oath, to the Secretary and any other appropriate Federal official, to the State in which the violation allegedly occurred or is occurring, and to any alleged violator; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States or a State with respect to such matter, but in any such action in a court of the United States any person having a legal interest which is or may be adversely affected may intervene as a matter of right.

(3) An action may be brought under this subsection immediately after notification of the alleged violation in any case in which the alleged violation constitutes an imminent threat to the public health or safety or would immediately affect a legal interest of the plaintiff.

(4) In any action commenced pursuant to this section, the Attorney General, upon the request of the Secretary or any other appropriate Federal official, may intervene as a matter of right.

(5) A court, in issuing any final order in any action brought pursuant to subsection (a)(1) or subsection (c) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party, whenever such court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in a sufficient amount to compensate for any loss or damage suffered, in accordance with the Federal Rules of Civil Procedure.

(6) Except as provided in subsection (c) of this section, all suits challenging actions or decisions allegedly in violation of, or seeking enforcement of, the provisions of this subchapter, or any regulation promulgated under this subchapter, or the terms of any permit or lease issued by the Secretary under this subchapter, shall be undertaken in accordance with the procedures described in this subsection. Nothing in this section shall restrict any right which any person or class of persons may have under any other Act or common law to seek appropriate relief.

(b) Jurisdiction and venue of actions

(1) Except as provided in subsection (c) of this section, the district courts of the United States shall have jurisdiction of cases and controversies arising out of, or in connection with (A) any operation conducted on the outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such minerals, or (B) the cancellation, suspension, or termination of a lease or permit under this subchapter. Proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the State nearest the place the cause of action arose.

(2) Any resident of the United States who is injured in any manner through the failure of any operator to comply with any rule, regulation, order, or permit issued pursuant to this subchapter may bring an action for damages (including reasonable attorney and expert witness fees) only in the judicial district having jurisdiction under paragraph (1) of this subsection.

(c) Review of Secretary's approval of leasing program; review of approval, modification or disapproval of exploration or production plan; persons who may seek review; scope of review; certiorari to Supreme Court

(1) Any action of the Secretary to approve a leasing program pursuant to section 1344 of this title shall be subject to judicial review only in the United States Court of Appeal [1] for the District of Columbia.

(2) Any action of the Secretary to approve, require modification of, or disapprove any exploration plan or any development and production plan under this subchapter shall be subject to judicial review only in a United States court of appeals for a circuit in which an affected State is located.

(3) The judicial review specified in paragraphs (1) and (2) of this subsection shall be available only to a person who (A) participated in the administrative proceedings related to the actions specified in such paragraphs, (B) is adversely affected or aggrieved by such action, (C) files a petition for review of the Secretary's action within sixty days after the date of such action, and (D) promptly transmits copies of the petition to the Secretary and to the Attorney General.

(4) Any action of the Secretary specified in paragraph (1) or (2) shall only be subject to review pursuant to the provisions of this subsection, and shall be specifically excluded from citizen suits which are permitted pursuant to subsection (a) of this section.

(5) The Secretary shall file in the appropriate court the record of any public hearings required by this subchapter and any additional information upon which the Secretary based his decision, as required by section 2112 of Title 28. Specific objections to the action of the Secretary shall be considered by the court only if the issues upon which such objections are based have been submitted to the Secretary during the administrative proceedings related to the actions involved.

(6) The court of appeals conducting a proceeding pursuant to this subsection shall consider the matter under review solely on the record made before the Secretary. The findings of the Secretary, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

(7) Upon the filing of the record with the court, pursuant to paragraph (5), the jurisdiction of the court shall be exclusive and its judgment shall be final, except that such judgment shall be subject to review by the Supreme Court of the United States upon writ of certiorari.

CREDIT(S)

(Aug. 7, 1953, c. 345, § 23, added Sept. 18, 1978, Pub.L. 95-372, Title II, § 208, 92 Stat. 657; amended Nov. 8, 1984, Pub.L. 98-620, Title IV, § 402(44), 98 Stat. 3360.)

Footnotes

1 So in original. Probably should be “Appeals”.

43 U.S.C.A. § 1349, 43 USCA § 1349

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United States Code Annotated
Title 46. Shipping (Refs & Annos)
Subtitle II. Vessels and Seamen
Part G. Merchant Seamen Protection and Relief
Chapter 103. Foreign and Intercoastal Voyages

46 U.S.C.A. § 10313

§ 10313. Wages

Effective: October 15, 2010
Currentness

(a) A seaman's entitlement to wages and provisions begins when the seaman begins work or when specified in the agreement required by section 10302 of this title for the seaman to begin work or be present on board, whichever is earlier.

(b) Wages are not dependent on the earning of freight by the vessel. When the loss or wreck of the vessel ends the service of a seaman before the end of the period contemplated in the agreement, the seaman is entitled to wages for the period of time actually served. The seaman shall be deemed a destitute seaman under section 11104 of this title. This subsection applies to a fishing or whaling vessel but not a yacht.

(c) When a seaman who has signed an agreement is discharged improperly before the beginning of the voyage or before one month's wages are earned, without the seaman's consent and without the seaman's fault justifying discharge, the seaman is entitled to receive from the master or owner, in addition to wages earned, one month's wages as compensation.

(d) A seaman is not entitled to wages for a period during which the seaman--

(1) unlawfully failed to work when required, after the time fixed by the agreement for the seaman to begin work; or

(2) lawfully was imprisoned for an offense, unless a court hearing the case otherwise directs.

(e) After the beginning of the voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5 days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement and is entitled to payment of all wages earned. Notwithstanding a release signed by a seaman under section 10312 of this title, a court having jurisdiction may set aside, for good cause shown, the release and take action that justice requires. This subsection does not apply to a fishing or whaling vessel or a yacht.

(f) At the end of a voyage, the master shall pay each seaman the balance of wages due the seaman within 24 hours after the cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier. When a seaman is discharged and final payment of wages is delayed for the period permitted by this subsection, the seaman is entitled at the time of discharge to one-third of the wages due the seaman.

(g)(1) Subject to paragraph (2), when payment is not made as provided under subsection (f) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.

(2) The total amount required to be paid under paragraph (1) with respect to all claims in a class action suit by seamen on a passenger vessel capable of carrying more than 500 passengers for wages under this section against a vessel master, owner, or operator or the employer of the seamen shall not exceed ten times the unpaid wages that are the subject of the claims.

(3) A class action suit for wages under this subsection must be commenced within three years after the later of--

(A) the date of the end of the last voyage for which the wages are claimed; or

(B) the receipt, by a seaman who is a claimant in the suit, of a payment of wages that are the subject of the suit that is made in the ordinary course of employment.

(h) Subsections (f) and (g) of this section do not apply to a fishing or whaling vessel or a yacht.

(i) This section applies to a seaman on a foreign vessel when in a harbor of the United States. The courts are available to the seaman for the enforcement of this section.

CREDIT(S)

(Pub.L. 98-89, Aug. 26, 1983, 97 Stat. 566; Pub.L. 99-640, § 10(b)(4), Nov. 10, 1986, 100 Stat. 3550; Pub.L. 111-281, Title IX, § 902(a)(1), Oct. 15, 2010, 124 Stat. 3008.)

46 U.S.C.A. § 10313, 46 USCA § 10313
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United States Code Annotated
Title 46. Shipping (Refs & Annos)
Subtitle II. Vessels and Seamen
Part G. Merchant Seamen Protection and Relief
Chapter 105. Coastwise Voyages

46 U.S.C.A. § 10504

§ 10504. Wages

Effective: October 15, 2010
Currentness

(a) After the beginning of a voyage, a seaman is entitled to receive from the master, on demand, one-half of the balance of wages earned and unpaid at each port at which the vessel loads or delivers cargo during the voyage. A demand may not be made before the expiration of 5 days from the beginning of the voyage, not more than once in 5 days, and not more than once in the same port on the same entry. If a master does not comply with this subsection, the seaman is released from the agreement required by section 10502 of this title and is entitled to payment of all wages earned. Notwithstanding a release signed by a seaman under section 10312 of this title, a court having jurisdiction may set aside, for good cause shown, the release and take action that justice requires. This subsection does not apply to a fishing or whaling vessel or a yacht.

(b) The master shall pay a seaman the balance of wages due the seaman within 2 days after the termination of the agreement required by section 10502 of this title or when the seaman is discharged, whichever is earlier.

(c)(1) Subject to subsection (d), and except as provided in paragraph (2), when payment is not made as provided under subsection (b) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.

(2) The total amount required to be paid under paragraph (1) with respect to all claims in a class action suit by seamen on a passenger vessel capable of carrying more than 500 passengers for wages under this section against a vessel master, owner, or operator or the employer of the seamen shall not exceed ten times the unpaid wages that are the subject of the claims.

(3) A class action suit for wages under this subsection must be commenced within three years after the later of--

(A) the date of the end of the last voyage for which the wages are claimed; or

(B) the receipt, by a seaman who is a claimant in the suit, of a payment of wages that are the subject of the suit that is made in the ordinary course of employment.

(d) Subsections (b) and (c) of this section do not apply to:

(1) a vessel engaged in coastwise commerce.

(2) a yacht.

(3) a fishing vessel.

(4) a whaling vessel.

(e) This section applies to a seaman on a foreign vessel when in harbor of the United States. The courts are available to the seaman for the enforcement of this section.

(f) Deposits in seaman account.--On written request signed by the seaman, a seaman employed on a passenger vessel capable of carrying more than 500 passengers may authorize, the master, owner, or operator of the vessel, or the employer of the seaman, to make deposits of wages of the seaman into a checking, savings, investment, or retirement account, or other account to secure a payroll or debit card for the seaman if--

(1) the wages designated by the seaman for such deposit are deposited in a United States or international financial institution designated by the seaman;

(2) such deposits in the financial institution are fully guaranteed under commonly accepted international standards by the government of the country in which the financial institution is licensed;

(3) a written wage statement or pay stub, including an accounting of any direct deposit, is delivered to the seaman no less often than monthly; and

(4) while on board the vessel on which the seaman is employed, the seaman is able to arrange for withdrawal of all funds on deposit in the account in which the wages are deposited.

CREDIT(S)

(Pub.L. 98-89, Aug. 26, 1983, 97 Stat. 570; Pub.L. 99-36, § 1(a)(5), May 15, 1985, 99 Stat. 67; Pub.L. 99-640, § 10(b)(4), (5), Nov. 10, 1986, 100 Stat. 3550; Pub.L. 111-281, Title IX, § 902(b), Oct. 15, 2010, 124 Stat. 3009.)

46 U.S.C.A. § 10504, 46 USCA § 10504
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West's Annotated California Codes
Business and Professions Code (Refs & Annos)
Division 7. General Business Regulations (Refs & Annos)
Part 2. Preservation and Regulation of Competition (Refs & Annos)
Chapter 5. Enforcement (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 17200

§ 17200. Unfair competition; prohibited activities

Currentness

As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

Credits
(Added by Stats.1977, c. 299, p. 1202, § 1. Amended by Stats.1992, c. 430 (S.B.1586), § 2.)

West's Ann. Cal. Bus. & Prof. Code § 17200, CA BUS & PROF § 17200
Current with urgency legislation through Ch. 2 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

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West's Annotated California Codes
Labor Code (Refs & Annos)
Division 2. Employment Regulation and Supervision (Refs & Annos)
Part 1. Compensation (Refs & Annos)
Chapter 1. Payment of Wages
Article 1. General Occupations (Refs & Annos)

West's Ann.Cal.Labor Code § 201

§ 201. Immediate payment of wages upon discharge or layoff; treatment of related benefits

Effective: May 16, 2002
Currentness

(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. An employer who lays off a group of employees by reason of the termination of seasonal employment in the curing, canning, or drying of any variety of perishable fruit, fish or vegetables, shall be deemed to have made immediate payment when the wages of said employees are paid within a reasonable time as necessary for computation and payment thereof; provided, however, that the reasonable time shall not exceed 72 hours, and further provided that payment shall be made by mail to any employee who so requests and designates a mailing address therefor.

(b) Notwithstanding any other provision of law, the state employer shall be deemed to have made an immediate payment of wages under this section for any unused or accumulated vacation, annual leave, holiday leave, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power, provided, at least five workdays prior to his or her final day of employment, the employee submits a written election to his or her appointing power authorizing the state employer to tender payment for any or all leave to be contributed on a pretax basis to the employee's account in a state-sponsored supplemental retirement plan as described under Sections 401(k), 403(b), or 457 of the Internal Revenue Code provided the plan allows those contributions. The contribution shall be tendered for payment to the employee's 401(k), 403(b), or 457 plan account no later than 45 days after the employee's discharge from employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

(c) Notwithstanding any other provision of law, when the state employer discharges an employee, the employee may, at least five workdays prior to his or her final day of employment, submit a written election to his or her appointing power authorizing the state employer to defer into the next calendar year payment of any or all of the employee's unused or accumulated vacation, annual leave, holiday leave, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power. To qualify for the deferral of payment under this section, only that portion of leave that extends past the November pay period for state employees shall be deferred into the next calendar year. An employee electing to defer payment into the next calendar year under this section may do any of the following:

(1) Contribute the entire payment to his or her 401(k), 403(b), or 457 plan account.

(2) Contribute any portion of the deferred payment to his or her 401(k), 403(b), or 457 plan account and receive cash payment for the remaining noncontributed unused leave.

(3) Receive a lump-sum payment for all of the deferred unused leave as described above.

Payments shall be tendered under this section no later than February 1 in the year following the employee's last day of employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

Credits

(Stats.1937, c. 90, p. 197, § 201. Amended by Stats.1947, c. 769, p. 1849, § 1; Stats.2002, c. 40 (A.B.1684), § 6, eff. May 16, 2002.)

West's Ann. Cal. Labor Code § 201, CA LABOR § 201
Current with urgency legislation through Ch. 2 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

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Article 1. General Occupations (Refs & Annos)

West's Ann.Cal.Labor Code § 202

§ 202. Immediate payment of wages upon resignation; treatment of related benefits

Effective: May 16, 2002
Currentness

(a) If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

(b) Notwithstanding any other provision of law, the state employer shall be deemed to have made an immediate payment of wages under this section for any unused or accumulated vacation, annual leave, holiday leave, sick leave to which the employee is otherwise entitled due to a disability retirement, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power, provided at least five workdays prior to his or her final day of employment, the employee submits a written election to his or her appointing power authorizing the state employer to tender payment for any or all leave to be contributed on a pretax basis to the employee's account in a state-sponsored supplemental retirement plan as described under Sections 401(k), 403(b), or 457 of the Internal Revenue Code provided the plan allows those contributions. The contribution shall be tendered for payment to the employee's 401(k), 403(b), or 457 plan account no later than 45 days after the employee's last day of employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

(c) Notwithstanding any other provision of law, when a state employee quits, retires, or disability retires from his or her employment with the state, the employee may, at least five workdays prior to his or her final day of employment, submit a written election to his or her appointing power authorizing the state employer to defer into the next calendar year payment of any or all of the employee's unused or accumulated vacation, annual leave, holiday leave, sick leave to which the employee is otherwise entitled due to a disability, retirement, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power. To qualify for the deferral of payment under this section, only that portion of leave that extends past the November pay period for state employees shall be deferred into the next calendar year under this section may do any of the following:

(1) Contribute the entire payment to his or her 401(k), 403(b), or 457 plan account.

(2) Contribute any portion of the deferred payment to his or her 401(k), 403(b), or 457 plan account and receive cash payment for the remaining noncontributed unused leave.

(3) Receive a lump-sum payment for all of the deferred unused leave as described above.

Payments shall be tendered under this section no later than February 1 in the year following the employee's last day of employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

Credits

(Stats.1937, c. 90, p. 197, § 202. Amended by Stats.1990, c. 440 (S.B.2109), § 1; Stats.2002, c. 40 (A.B.1684), § 7, eff. May 16, 2002.)

West's Ann. Cal. Labor Code § 202, CA LABOR § 202
Current with urgency legislation through Ch. 2 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

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West's Ann.Cal.Labor Code § 203

§ 203. Failure to make payment within required time; penalty; employee avoiding payment; limitation of actions

Effective: January 1, 2015
Currentness

(a) If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.

(b) Suit may be filed for these penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise.

Credits

(Stats.1937, c. 90, p. 197, § 203. Amended by Stats.1939, c. 1096, p. 3026, § 1; Stats.1975, c. 43, p. 75, § 1; Stats.1997, c. 92 (S.B.1071), § 1; Stats.2008, c. 169 (S.B.940), § 2; Stats.2014, c. 210 (A.B.2743), § 1, eff. Jan. 1, 2015.)

West's Ann. Cal. Labor Code § 203, CA LABOR § 203
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West's Ann.Cal.Labor Code § 226

§ 226. Itemized statements; contents; inspection and copying of records; compliance with inspection requests; violations; injunctive relief; limitation of application and liability

Effective: January 1, 2013
Currentness

(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, “copy” includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

(b) An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.

(c) An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.

(d) This section does not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e)(1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2)(A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

(C) For purposes of this paragraph, “promptly and easily determine” means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

(3) For purposes of this subdivision, a “knowing and intentional failure” does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake. In reviewing for compliance with this section, the factfinder may consider as a relevant factor whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section.

(f) A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar ($750) penalty from the employer.

(g) The listing by an employer of the name and address of the legal entity that secured the services of the employer in the itemized statement required by subdivision (a) shall not create any liability on the part of that legal entity.

(h) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

(i) This section does not apply to the state, to any city, county, city and county, district, or to any other governmental entity, except that if the state or a city, county, city and county, district, or other governmental entity furnishes its employees with a check, draft, or voucher paying the employee's wages, the state or a city, county, city and county, district, or other governmental entity shall use no more than the last four digits of the employee's social security number or shall use an employee identification number other than the social security number on the itemized statement provided with the check, draft, or voucher.

Credits

(Added by Stats.1943, c. 1027, p. 2965, § 1. Amended by Stats.1945, c. 1140, p. 2179, § 1; Stats.1963, c. 1080, p. 2540, § 1; Stats.1976, c. 832, p. 1899, § 1; Stats.1978, c. 1247, p. 4059, § 3, operative Jan. 1, 1980; Stats.1982, c. 454, p. 1876, § 131; Stats.1982, c. 327, p. 1470, § 124, eff. June 30, 1982; Stats.1984, c. 486, § 1, operative Jan. 1, 1986; Stats.1987, c. 976, § 1; Stats.1988, c. 827, § 1, eff. Sept. 12, 1988; Stats.2000, c. 876 (A.B.2509), § 6; Stats.2002, c. 933 (A.B.2412), § 1; Stats.2003, c. 329 (A.B.276), § 3; Stats.2004, c. 860 (S.B.1618), § 1; Stats.2005, c. 103 (S.B.101), § 1, eff. July 21, 2005; Stats.2011, c. 655 (A.B.469), § 4; Stats.2011, c. 671 (A.B.243), § 1.5; Stats.2012, c. 842 (A.B.2674), § 1; Stats.2012, c. 843 (S.B.1255), § 1; Stats.2012, c. 844 (A.B.1744), § 1.7.)

West's Ann. Cal. Labor Code § 226, CA LABOR § 226
Current with urgency legislation through Ch. 2 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

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West's Ann.Cal.Labor Code § 226.7

§ 226.7. “Recovery period” defined; mandated meal, rest, or recovery periods; requirement to work prohibited; application of section

Effective: January 1, 2015
Currentness

(a) As used in this section, “recovery period” means a cooldown period afforded an employee to prevent heat illness.

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

(d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

(e) This section shall not apply to an employee who is exempt from meal or rest or recovery period requirements pursuant to other state laws, including, but not limited to, a statute or regulation, standard, or order of the Industrial Welfare Commission.

Credits
(Added by Stats.2000, c. 876 (A.B.2509), § 7. Amended by Stats.2013, c. 719 (S.B.435), § 1; Stats.2014, c. 72 (S.B.1360), § 1, eff. Jan. 1, 2015.)

West's Ann. Cal. Labor Code § 226.7, CA LABOR § 226.7
Current with urgency legislation through Ch. 2 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

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Chapter 1. General (Refs & Annos)

West's Ann.Cal.Labor Code § 510

§ 510. Day's work; overtime; commuting time

Effective: January 1, 2000
Currentness

(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. The requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to any of the following:

(1) An alternative workweek schedule adopted pursuant to Section 511.

(2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.

(3) An alternative workweek schedule to which this chapter is inapplicable pursuant to Section 554.

(b) Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, when the employee commutes in a vehicle that is owned, leased, or subsidized by the employer and is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code.

(c) This section does not affect, change, or limit an employer's liability under the workers' compensation law.

Credits
(Stats.1937, c. 90, p. 205, § 510. Amended by Stats.1982, c. 185, p. 563, § 1; Stats.1999, c. 134 (A.B.60), § 4.)

West's Ann. Cal. Labor Code § 510, CA LABOR § 510
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West's Ann.Cal.Labor Code § 512

§ 512. Meal periods; requirements; order permitting meal period after six hours of work; exceptions; remedies under collective bargaining agreement

Effective: January 1, 2011
Currentness

(a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(b) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees.

(c) Subdivision (a) does not apply to an employee in the wholesale baking industry who is subject to an Industrial Welfare Commission wage order and who is covered by a valid collective bargaining agreement that provides for a 35-hour workweek consisting of five 7-hour days, payment of one and one-half times the regular rate of pay for time worked in excess of seven hours per day, and a rest period of not less than 10 minutes every two hours.

(d) If an employee in the motion picture industry or the broadcasting industry, as those industries are defined in Industrial Welfare Commission Wage Order Numbers 11 and 12, is covered by a valid collective bargaining agreement that provides for meal periods and includes a monetary remedy if the employee does not receive a meal period required by the agreement, then the terms, conditions, and remedies of the agreement pertaining to meal periods apply in lieu of the applicable provisions pertaining to meal periods of subdivision (a) of this section, Section 226.7, and Industrial Welfare Commission Wage Order Numbers 11 and 12.

(e) Subdivisions (a) and (b) do not apply to an employee specified in subdivision (f) if both of the following conditions are satisfied:

(1) The employee is covered by a valid collective bargaining agreement.

(2) The valid collective bargaining agreement expressly provides for the wages, hours of work, and working conditions of employees, and expressly provides for meal periods for those employees, final and binding arbitration of disputes concerning

application of its meal period provisions, premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate.

(f) Subdivision (e) applies to each of the following employees:

(1) An employee employed in a construction occupation.

(2) An employee employed as a commercial driver.

(3) An employee employed in the security services industry as a security officer who is registered pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, and who is employed by a private patrol operator registered pursuant to that chapter.

(4) An employee employed by an electrical corporation, a gas corporation, or a local publicly owned electric utility.

(g) The following definitions apply for the purposes of this section:

(1) “Commercial driver” means an employee who operates a vehicle described in Section 260 or 462 of, or subdivision (b) of Section 15210 of, the Vehicle Code.

(2) “Construction occupation” means all job classifications associated with construction by Article 2 (commencing with Section 7025) of Chapter 9 of Division 3 of the Business and Professions Code, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair, and any other similar or related occupation or trade.

(3) “Electrical corporation” has the same meaning as provided in Section 218 of the Public Utilities Code.

(4) “Gas corporation” has the same meaning as provided in Section 222 of the Public Utilities Code.

(5) “Local publicly owned electric utility” has the same meaning as provided in Section 224.3 of the Public Utilities Code.

Credits

(Added by Stats.1999, c. 134 (A.B.60), § 6. Amended by Stats.2000, c. 492 (S.B.88), § 1, eff. Sept. 19, 2000; Stats.2003, c. 207 (A.B.330), § 1; Stats.2005, c. 414 (A.B.1734), § 1; Stats.2010, c. 662 (A.B.569), § 1.)

West's Ann. Cal. Labor Code § 512, CA LABOR § 512
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West's Ann.Cal.Labor Code § 1194

§ 1194. Action to recover minimum wage, overtime compensation, interest, attorney's fees, and costs by employee

Currentness

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

(b) The amendments made to this section by Chapter 825 of the Statutes of 1991 shall apply only to civil actions commenced on or after January 1, 1992.

Credits

(Stats.1937, c. 90, p. 217, § 1194. Amended by Stats.1961, c. 408, p. 1479, § 3; Stats.1972, c. 1122, p. 2156, § 13; Stats.1973, c. 1007, p. 2004, § 8; Stats.1991, c. 825 (S.B.955), § 2; Stats.1992, c. 427 (A.B.3355), § 120.)

West's Ann. Cal. Labor Code § 1194, CA LABOR § 1194
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West's Ann.Cal.Labor Code § 1194.2

§ 1194.2. Liquidated damages

Effective: January 1, 2015
Currentness

(a) In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise.

(b) Notwithstanding subdivision (a), if the employer demonstrates to the satisfaction of the court or the Labor Commissioner that the act or omission giving rise to the action was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the commission, the court or the Labor Commissioner may, as a matter of discretion, refuse to award liquidated damages or award any amount of liquidated damages not exceeding the amount specified in subdivision (a).

(c) This section applies only to civil actions commenced on or after January 1, 1992.

Credits
(Added by Stats.1991, c. 825 (S.B.955), § 3. Amended by Stats.2011, c. 272 (A.B.240), § 2; Stats.2013, c. 735 (A.B.442), § 1; Stats.2014, c. 211 (A.B.2074), § 1, eff. Jan. 1, 2015.)

West's Ann. Cal. Labor Code § 1194.2, CA LABOR § 1194.2
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West's Ann.Cal.Labor Code § 1197

§ 1197. Payment of lower wage than minimum wage

Effective: January 1, 2016
Currentness

The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

Credits

(Stats.1937, c. 90, p. 217, § 1197. Amended by Stats.1972, c. 1122, p. 2156, § 17; Stats.2015, c. 783 (A.B.970), § 2, eff. Jan. 1, 2016.)

West's Ann. Cal. Labor Code § 1197, CA LABOR § 1197
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West's Ann.Cal.Labor Code § 2699

§ 2699. Actions brought by an aggrieved employee or on behalf of self or other current or former employees; authority; gap-filler penalties; attorneys fees; exclusion; distribution of recovered penalties

Effective: October 2, 2015
Currentness

(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

(b) For purposes of this part, “person” has the same meaning as defined in Section 18.

(c) For purposes of this part, “aggrieved employee” means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

(d) For purposes of this part, “cure” means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the written notice sent pursuant to paragraph (1) of subdivision (c) of Section 2699.3.

(e)(1) For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars ($500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

(g)(1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

(*l*) The superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.

Credits

(Added by Stats.2003, c. 906 (S.B.796), § 2. Amended by Stats.2004, c. 34 (S.B.899), § 5.5, eff. April 19, 2004; Stats.2004, c. 221 (S.B.1809), § 3, eff. Aug. 11, 2004; Stats.2015, c. 445 (A.B.1506), § 1, eff. Oct. 2, 2015.)

West's Ann. Cal. Labor Code § 2699, CA LABOR § 2699
Current with urgency legislation through Ch. 2 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

End of Document

West's Annotated California Codes
Labor Code (Refs & Annos)
Division 2. Employment Regulation and Supervision (Refs & Annos)
Part 13. The Labor Code Private Attorneys General Act of 2004 (Refs & Annos)

West's Ann.Cal.Labor Code § 2699.3

§ 2699.3. Requirements for aggrieved employee to commence a civil action

Effective: October 2, 2015
Currentness

(a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(2)(A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 30 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 33 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 33 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the 158-day period prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give notice by certified mail to the Division of Occupational Safety and Health and the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2)(A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).

(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.

(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

(3)(A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.

(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.

(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.

(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.

(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(2)(A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) (i) Subject to the limitation in clause (ii), no employer may avail himself or herself of the notice and cure provisions of this subdivision more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(ii) No employer may avail himself or herself of the notice and cure provisions of this subdivision with respect to alleged violations of paragraph (6) or (8) of subdivision (a) of Section 226 more than once in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by certified mail, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the postmark date of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

(d) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

Credits

(Added by Stats.2004, c. 221 (S.B.1809), § 4, eff. Aug. 11, 2004. Amended by Stats.2015, c. 445 (A.B.1506), § 2, eff. Oct. 2, 2015.)

West's Ann. Cal. Labor Code § 2699.3, CA LABOR § 2699.3
Current with urgency legislation through Ch. 2 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

End of Document

West's Annotated California Codes
Labor Code (Refs & Annos)
Division 2. Employment Regulation and Supervision (Refs & Annos)
Part 13. The Labor Code Private Attorneys General Act of 2004 (Refs & Annos)

West's Ann.Cal.Labor Code § 2699.5

§ 2699.5. Application of subd. (a) of § 2699.3

Effective: October 2, 2015
Currentness

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Credits

(Added by Stats.2004, c. 221 (S.B.1809), § 5, eff. Aug. 11, 2004. Amended by Stats.2005, c. 22 (S.B.1108), § 141; Stats.2008, c. 169 (S.B.940), § 8; Stats.2009, c. 140 (A.B.1164), § 136; Stats.2015, c. 445 (A.B.1506), § 3, eff. Oct. 2, 2015.)

West's Ann. Cal. Labor Code § 2699.5, CA LABOR § 2699.5
Current with urgency legislation through Ch. 2 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

End of Document

Barclays Official California Code of Regulations Currentness
Title 8. Industrial Relations
Division 1. Department of Industrial Relations
Chapter 5. Industrial Welfare Commission
Group 2. Industry and Occupation Orders
Article 16. on-Site Occupations (Refs & Annos)

8 CCR § 11160

§ 11160. Wages, Hours and Working Conditions for Certain On-Site Occupations in the Construction, Drilling, Logging and Mining Industries.

1. Applicability of Order This order shall apply to all persons employed in the on-site occupations of construction, including, but not limited to, work involving alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code Division 3, Chapter 9, §§ 7025 et seq .; drilling, including but not limited to, all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code §§ 4571 through 4586; and, mining (not covered by Labor Code § 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration, or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or the basis, except that:

(A) The provisions of Sections 3 through 12 shall not apply to persons employed in administrative, executive, or professional capacities. No person shall be considered to be employed in an administrative, executive, or professional capacity unless the person is primarily engaged in the duties which meet the test of the exemption, and earns a monthly salary equivalent to not less than two times the state minimum wage for full-time employment. The duties that meet the test of the exemption are one of the following set of conditions:

(1) The employee is engaged in work which is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment, or

(2) The employee is licensed, or certified by the State of California, and is engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting, or the employee is engaged in an occupation that is commonly recognized as a learned, or artistic profession; provided, however, that pharmacists employed to engage in the practice of pharmacy, and registered nurses employed to engage in the practice of nursing, shall not be considered exempt professional employees, nor shall they be considered exempt from coverage for the purposes of this section unless they individually meet the criteria established for exemption as executive, or administrative employees.

(3) To the extent that there is no conflict with California law [1], the duties that meet the test of the administrative, and executive exemptions are defined as set forth in the following sections of the Code of Federal Regulations as they existed as of the date of this Wage Order: 29 C.F.R. §§ 541.1(a)-(c), 541.102, 541.104, 541.105, 541.106, 541.108, 541.109, 541.111, 541.115, and 541.116 (defining executive duties); 29 C.F.R. §§ 541.2(a)-(c), 541.201, 541.205, 541.208, and 541.210 (defining administrative duties).

(4) For the purposes of this section, “full-time employment” means employment in which an employee is employed for forty (40) hours per week.

(B) Except as provided in Sections 1, Applicability, 2, Definitions, 4, Minimum Wages, 9, Meals and Lodging, and 18, Penalties, the provisions of this Order shall not apply to any employees directly employed by the State or any political subdivision thereof, including any city, county, or special district.

(C) The provisions of this Order shall not apply to outside salespersons.

(D) The provisions of this Order shall not apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.

(E) The provisions of this Order shall not apply to any individual participating in a national service program, such as AmeriCorps, carried out using assistance provided under Section 12571 of Title 42 of the United States Code. (See Stats. 2000, ch. 365, amending Labor Code § 1171.)

(F) This Order supersedes any industry or occupational order for those employees employed in occupations covered by this Order.

2. Definitions

(A) “Alternative Workweek Schedule” means any regularly scheduled workweek proposed by an employer who has control over the wages, hours, and working conditions of the employees, and ratified by an employee work unit in a neutral secret ballot election, that requires an employee to work more than eight (8) hours in a twenty-four (24) hour period.

(B) “Commission” means the Industrial Welfare Commission of the State of California.

(C) “Construction Occupations” mean all job classifications associated with construction, including but not limited to, work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work by the California Business and Professions Code, Division 3, Chapter 9, §§ 7025 et seq ., and any other similar, or related occupations, or trades.

(D) “Division” means the Division of Labor Standards Enforcement of the State of California.

(E) “Drilling Occupations” mean all job classifications associated with the exploration, or extraction of oil, gas, or water resources work including, but not limited to, the installation, establishment, reworking, maintenance or repair of wells and pumps by boring, drilling, excavating, casting, cementing and cleaning for the extraction or conveyance of fluids such as water, steam, gases, or petroleum.

(F) “Emergency” means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.

(G) “Employ” means to engage, suffer, or permit to work.

(H) “Employee” means any person employed by an employer.

(I) “Employer” means any person as defined in § 18 of the Labor Code, who directly or indirectly, or through an agent, or any other person, employs, or exercises control over the wages, hours, and/or working conditions of any person.

(J) “Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

(K) “Logging Occupations” mean any work for which a timber operator's license is required pursuant to California Public Resources Code §§ 4571-4586, including the cutting, or removal, or both of timber, or other solid wood forest products, including Christmas trees, from timberlands for commercial purposes, together with all the work that is incidental thereto, including, but not limited to, construction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, beds for the falling of trees, and fire hazard abatement.

(L) “Mining Occupations” mean miners, and other associated and related occupations (not covered by Labor Code §§ 750 et seq .) required to engage in excavation or operations above or below ground including work in mines, quarries, or open pits, used for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials, such as stone, gravel, and rock, or other materials intended for manufacture or sale, whether paid on a time, piece rate, commission, or other basis.

(M) “Minor” means, for the purposes of this Order, any person under the age of eighteen (18) years as defined by Labor Code §§ 1285 to 1312 and 1390-1399.

(N) “Outside Salesperson” means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items, or obtaining orders or contracts for products, services or use of facilities. An “outside salesperson” does not include an employee who makes deliveries or service calls for the purpose of installing, replacing, repairing, removing, or servicing a product.

(O) “Primarily” means more than one-half the employee's work time.

(P) “Regularly Scheduled Workweek” means a schedule where the length of the shift and the number of days of work are predesignated pursuant to an alternative workweek schedule.

(Q) “Split shift” means a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.

(R) “Wages” are as defined by California Labor Code § 200.

(S) “Workday or day” means any consecutive twenty-four (24) hours beginning at the same time each calendar day.

(T) “Workweek or week” means any seven (7) consecutive day, starting with the same calendar day each week. “Workweek” is a fixed, and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.

(U) “Work Unit” means all nonexempt employees of a single employer within a given craft who share a common work site. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection is met.

3. Hours and Days of Work

(A) Daily Overtime-General Provisions

(1) The following overtime provisions are applicable to employees eighteen (18) years of age or over, and to employees sixteen (16) or seventeen (17) years of age who are not required by law to attend school, and who are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday, or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours in the workweek. Employment beyond eight (8) hours in any workday, or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday, and for all hours worked in an excess of eight (8) hours on the seventh (7th) consecutive day of work in any workweek.

(c) The overtime rate of compensation to be paid to a nonexempt full-time salaried employee shall be computed by using one-fortieth (1/40) of the employee's weekly salary as the employee's regular hourly rate of pay.

(B) Alternative Workweek Schedules

(1) No employer, who has control over the wages, hours, and working conditions of employee's, shall be deemed to have violated the provisions of Section 3, Hours and Days of Work, by instituting, pursuant to the election procedures set forth in this Order, a regularly scheduled alternative workweek pursuant to the following conditions:

(a) The alternative workweek schedule shall provide for work by the affected employees of no longer than ten (10) hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section.

(b) An affected employee working longer than eight hours but no more than ten (10) hours in a day pursuant to an alternative workweek schedule adopted pursuant to this section shall be paid an overtime rate of compensation of not less than one and one-half (1 1/2) times the regular rate of pay of the employee for any work in excess of the regularly scheduled hours established by the alternative workweek agreement and for any work in excess of forty (40) hours per week.

(c) An overtime rate of compensation of not less than double the employee's regular rate of pay shall be paid for any work in excess of twelve (12) hours per day and for any work in excess of eight hours on those days worked beyond the regularly scheduled workdays established by the alternative workweek agreement.

(d) An employer shall not reduce an employee's regular rate of hourly pay as a result of the adoption, repeal or nullification of an alternative workweek schedule.

(e) An employer shall make a reasonable effort to find a work schedule not to exceed eight hours in a workday to accommodate any effected employee who was eligible to vote in an election authorized by this section and who is unable to work the alternative schedule established as the result of that election. Employees affected by a change in work hours resulting from the adoption of an alternative workweek schedule shall not be required to work those new work hours for at least thirty (30) days after the announcement of the final results of the election.

(f) An employer shall be permitted, but not required, to provide a work schedule not to exceed eight hours in a workday to accommodate any employee who was hired after the date of the election and who is unable to work the alternative schedule established as the result of that election.

(g) An employer shall explore any available reasonable alternative means of accommodating the religious beliefs or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by Government Code § 12940(j).

(h) Notwithstanding paragraph (B)(1), subparagraphs (a)-(c), for employees working in offshore oil and gas production, drilling, and servicing occupations, as well as for employees working in onshore oil and gas separation occupations directly servicing offshore operations, an alternative workweek schedule may authorize work by the affected employees of no longer than twelve (12) hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation. Employees working pursuant to an alternative workweek schedule adopted pursuant to this section shall be paid an overtime rate of compensation of no less than two (2) times their regular rate of pay in excess of the regularly scheduled hours established by the alternative workweek agreement, and for one and one-half (1 1/2) times their regular rate of pay for any work in excess of forty (40) hours per week. The other provisions of this section, including those governing elections, shall apply to these occupations.

(i) In no case shall an alternative workweek requiring more than eight (8) hours of work in a day be utilized on a public works contract in violation of Labor Code §§ 1810-1815.

(C) Election Procedures

Election procedures for the adoption or repeal of alternative workweek schedules require the following:

(1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer who has control over wages, hours and working conditions of the affected employees, and adopted in a secret ballot election, held before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of workdays and work hours are regularly recurring. The employer may propose a single work schedule that would become the standard schedule for workers in the unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another.

(2) The election shall be held during regular working hours at the employees' work site. Ballots shall be mailed to the last known address of all employees in the work unit that are not present at the work site on the day of the election but have been employed by the employer within the last 30 calendar days immediately preceding the day of the election.

(3) Prior to the secret ballot vote, any employer who proposes to institute an alternative workweek schedule shall make a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees' wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least fourteen (14) days prior to voting, for the specific purpose of discussing the effects, of the alternative workweek schedule. An employer shall provide the disclosure in a non-English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. Notices shall be mailed to the last known address of all employees in the work unit in accordance with provision (2) above. Failure to comply with this paragraph shall make the election null and void.

(4) Any election to establish or repeal an alternative workweek schedule shall be held during regular working hours at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the Labor Commissioner, the Labor Commissioner may require the employer to select a neutral third party to conduct the election.

(5) Any type of alternative workweek schedule that is authorized by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held, provided six (6) months have passed since the election authorizing the alternative workweek. A two-thirds (2/3) vote of the affected employees shall be required to reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer.

(6) If the number of employees that are employed for at least 30 days in the work unit that adopted an alternative workweek schedule increases by 50% above the number who voted to ratify the employer proposed alternative

workweek schedule, the employer must conduct a new ratification election pursuant to the rules contained in subsection (C).

(7) The results of any election conducted pursuant to this Order shall be a public document and shall be reported by the employer to the Division of Labor Statistics and Research within thirty (30) days after the results are final. The report of the election results shall also be posted at the job site in a area frequented by employees where it may easily be read during the workday. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer. Employees participating in the election shall be free from intimidation and coercion. However, nothing in this section shall prohibit an employer from expressing its position concerning that alternative workweek to the affected employees. No employees shall be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. The Labor Commissioner shall investigate any alleged violation of this section and shall upon finding a serious violation render the alternative workweek schedule null and void.

(D) Combination of Overtime Rates. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

(E) Nondiscrimination. No employee shall be terminated, disciplined or otherwise discriminated against for refusing to work more than seventy-two (72) hours in any workweek, except in an emergency as defined in Section 2(H), above.

(F) Make-up Time. If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that make-up work time, if performed in the same workweek in which the work time was lost, may not be counted toward computing the total number of hours worked in a day for purposes of the overtime requirements, except for hours in excess of eleven (11) hours of work in one day or forty (40) hours of work in one workweek. If an employee knows in advance that he or she will be requesting make up time for a personal obligation that will recur at a fixed time over a succession of weeks, the employee may request to make up work time for up to four weeks in advance; provided, however, that the make up work must be performed in the same week that the work time was lost. An employee shall provide a signed written request for each occasion that the employee makes a request to make up work time pursuant to this section. While an employer may inform an employee of this make up time option, the employer is prohibited from encouraging or otherwise soliciting an employee to request the employer's approval to take personal time off and make up the work hours within the same workweek pursuant to this section. (See Labor Code § 513.)

(G) One Day's Rest in Seven. The provisions of Labor Code §§ 551 and 552 regarding one (1) day's rest in seven (7) shall not be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires the employee to work seven (7) or more consecutive days; provided however, that in each calendar month, the employee shall receive the equivalent of one (1) day's rest in seven (7).

(H) Collective Bargaining Agreements.

(1) Subsections A, B, C, D, and E of Section 3, Hours and Days of Work, shall not apply to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and

a regular hourly rate of pay for those employees of not less than thirty (30) percent more than the state minimum wage. (See Labor Code § 514)

(2) Subsection F, of Section 3, Hours and Days of Work, shall apply to any employee covered by a valid collective bargaining agreement unless the collective bargaining agreement expressly provides otherwise.

4. Minimum Wages

(A) Every employer shall pay to each employee wages not less than six dollars and twenty-five cents ($6.25) per hour for all hours worked, effective January 1, 2001, and not less than six dollars and seventy-five cents ($6.75) per hour for all hours worked, effective January 1, 2002.

(B) Every employer shall pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

5. Reporting Time Pay

(A) All employer-mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay or, if applicable, the premium rate that may be required by the provisions of Labor Code § 510 and Section 3, Hours and Days of Work, above.

(B) Each workday that an employee is required to report to the work site and does report, but is not put to work, or is furnished less than half of his or her usual or scheduled day's work, the employer shall pay him or her for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

(1) Operations cannot commence or continue due to threats to employees or property, or when recommended by civil authorities; or

(2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or

(3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) Collective Bargaining Agreements. This section shall apply to any employees covered by a valid collective bargaining agreement unless the collective bargaining agreement expressly provides otherwise.

6. Records

(A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following:

(1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. When a piece rate or incentive plan is in operation, piece rates, or an explanation of the incentive plan formula, shall be provided to employees. An accurate production record shall be maintained by the employer

(B) Every employer who has control over wages, hours, or working conditions shall semimonthly, or at the time of each payment of wages, furnish each employee an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and, (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code § 226.) This information shall be furnished either separately, or as a detachable part of the check, draft, or voucher paying the employee's wages.

(C) All required records shall be in the English language, in ink or other indelible form, and dated properly, showing month, day, and year. The employer who has control over wages, hours, or working conditions, shall also keep said records on file at the place of employment or at a central location for at least three years. An employee's records shall be available for inspection by the employee upon reasonable request.

(D) Employers performing work on public works projects should refer to Labor Code § 1776 for additional payroll reporting requirements.

7. Deductions from Pay

No employer shall collect or deduct from any employee any part of the wages that are paid unless such deductions are allowed by law. (See Labor Code §§ 220-226.) No fee shall be charged by the employer or agent of the employer for cashing a payroll check.

8. Uniforms and Equipment

(A) When the employer requires uniforms to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term “uniform” includes wearing apparel and accessories of distinctive design or color.

(B) When the employer requires the use of tools or equipment or they are necessary for the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage may provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code § 2802.

9. Meals and Lodging

(A) “Meal” means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

(B) “Lodging” means living accommodations available to the employee for full-time occupancy which are adequate, decent, and sanitary according to the usual and customary standards. Employees shall not be required to share a bed.

(C) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals, or lodging is used to meet part of the employer's minimum wage obligation, the amounts so credited may not be more than the following:

(D) Meals evaluated as part of the minimum wage must be bona fide meals consistent with the employee's work shift. Deductions shall not be made for meals not received or lodging not used.

(E) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

Effective Dates:	January 1, 2001	January 1, 2002
Lodging:		
Room occupied alone:	$29.40 per week	$31.75 per week
Room shared:	$24.25 per week	$26.20 per week
Apartment two-thirds (2/3) of the ordinary rental value, and in no event more than:	$352.95 per month	281.20 per month
Where a couple are both employed by the employer, two-thirds (2/3) of the ordinary	$522.10 per month	$563.90 per month

rental value, and in no event

more than:

Meals:		
Breakfast	$2.25	$2.45
Lunch	$3.10	$3.35
Dinner	$4.15	$4.50

10. Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee. (See Labor Code § 512.)

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (See Labor Code § 512.)

(C) In all places of employment the employer shall provide an adequate supply of potable water, soap, or other suitable cleansing agent and single use towels for hand washing.

(D) Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents the employee from being relieved of all duty and when, by written agreement between the parties, an on-the-job paid meal period is agreed to and complies with Labor Code § 512.

(E) Collective Bargaining Agreements. Paragraphs A, B, and D of Section 10, Meal Periods, shall not apply to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than thirty (30) percent more than the state minimum wage.

(F) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided. In cases where a valid collective bargaining agreement provides final and binding mechanism for resolving disputes regarding enforcement of the meal period provisions, the collective bargaining agreement will prevail.

11. Rest Periods

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable, shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees immediate work area.

(B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make-up the missed rest period within the same work day or compensate the employee for the missed ten (10) minutes of rest time at his or her regular rate of pay within the same pay period.

(C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period was not provided. In cases where a valid collective bargaining agreement provides final and binding mechanism for resolving disputes regarding enforcement of the rest period provisions, the collective bargaining agreement will prevail.

(E) This section shall not apply to any employee covered by a valid collective bargaining agreement if the collective bargaining agreement provides equivalent protection.

12. Seats

Where practicable and consistent with applicable industry-wide standards, all working employees shall be provided with suitable seats when the nature of the process and the work performed reasonably permits the use of seats. This section shall not exceed regulations promulgated by the Occupational Safety and Health Standards Board.

13. Temperature

The temperature maintained in each interior work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. This section shall not exceed regulations promulgated by the Occupational Safety and Health Standards Board.

14. Elevators

Where practicable and consistent with applicable industry-wide standards, adequate elevators, escalators, or similar service consistent with industry-wide standards for the nature of the process and the work performed, shall be provided, when employees are employed sixty (60) feet or more above or below ground level. This section shall not exceed regulations promulgated by the Occupational Safety and Health Board.

15. Exemptions

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 6, Records, Section 11, Rest Periods, Section 12, Seats, Section 13, Temperature, or Section 14, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, an exemption may be made at the discretion of the Division. Such exemption shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for an exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the Division.

16. Filing Reports (See Labor Code, Section 1174(a)).

17. Inspection (See Labor Code, Section 1174.)

18. Penalties

(A) Penalties for Violations of the Provisions of this Order. Any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to civil and criminal penalties as provided by law. In addition, violation of any provision of this order shall be subject to a civil penalty as follows:

(1) Initial Violation -$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover underpaid wages.

(2) Subsequent Violations -$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover underpaid wages.

(3) The affected employee shall receive payment of all wages recovered. The Labor Commissioner may also issue citations pursuant to Cal. Labor Code § 1197.1 for non-payment of wages for overtime work in violation of this order.

(B) Penalties for Violations Of Child Labor Laws. Any employer or other person acting on behalf of the employer is subject to civil penalties from $500 to $10,000 as well as to criminal penalties for violation of Child Labor Laws. (See Labor Code §§ 1285 to 1312 and 1390 to 1399 for additional restrictions on the employment of minors and for descriptions of criminal and civil penalties for violation of the child labor laws.) Employers should inquire at local school districts about any required work permits required for minors attending school.

(In addition, see Labor Code, Section 1199.)

19. Separability

If the application of any provision of this Order, or any section, subsection, subdivision, sentence, clause, phase, word, or portion of this Order should be held invalid, or unconstitutional, or unauthorized, or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part is held to be invalid or unconstitutional had not been included herein.

20. Posting of Order

Every employer shall keep a copy of this Order posted in an area frequented by employees where it may be easily read during the workday. Where the location of work or other conditions make this impractical, every employer shall keep a copy of this Order, and make it available to every employee upon request.

[1.] Labor Code Section 515(e) requires that an employee be “primarily” engaged in exempt work, which means “more than one-half of the employee's work time. Thus the “primary duty” test set forth in federal regulations does not apply.

HISTORY

1. New section filed 2-8-2001; operative 1-1-2001 pursuant to Government Code section 11343.4. Submitted to OAL for printing only pursuant to Labor Code section 517 (Register 2001, No. 6).

2. New article 16 heading filed 1-4-2002; operative 1-1-2001. Submitted to OAL for printing only pursuant to Labor Code section 517 (Register 2002, No. 1).

This database is current through 3/4/16 Register 2016, No. 10

8 CCR § 11160, 8 CA ADC § 11160

End of Document

Code of Federal Regulations
Title 29. Labor
Subtitle B. Regulations Relating to Labor
Chapter V. Wage and Hour Division, Department of Labor
Subchapter B. Statements of General Policy or Interpretation Not Directly Related to Regulations
Part 785. Hours Worked (Refs & Annos)
Subpart C. Application of Principles
Rest and Meal Periods

29 C.F.R. § 785.19

§ 785.19 Meal.

Currentness

(a) Bona fide meal periods. Bona fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (Culkin v. Glenn L. Martin, Nebraska Co., 97 F. Supp. 661 (D. Neb. 1951), aff'd 197 F. 2d 981 (C.A. 8, 1952), cert. denied 344 U.S. 888 (1952); Thompson v. Stock & Sons, Inc., 93 F. Supp. 213 (E.D. Mich 1950), aff'd 194 F. 2d 493 (C.A. 6, 1952); Biggs v. Joshua Hendy Corp., 183 F. 2d 515 (C.A. 9, 1950), 187 F. 2d 447 (C.A. 9, 1951); Walling v. Dunbar Transfer & Storage Co., 3 W.H. Cases 284; 7 Labor Cases para. 61.565 (W.D. Tenn. 1943); Lofton v. Seneca Coal and Coke Co., 2 W.H. Cases 669; 6 Labor Cases para. 61,271 (N.D. Okla. 1942); aff'd 136 F. 2d 359 (C.A. 10, 1943); cert. denied 320 U.S. 772 (1943); Mitchell v. Tampa Cigar Co., 36 Labor Cases para. 65,198, 14 W.H. Cases 38 (S.D. Fla. 1959); Douglass v. Hurwitz Co., 145 F. Supp. 29, 13 W.H. Cases (E.D. Pa. 1956))

(b) Where no permission to leave premises. It is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period.

SOURCE: 26 FR 190, Jan. 11, 1961; 76 FR 18859, April 5, 2011, unless otherwise noted.

AUTHORITY: 52 Stat. 1060; 29 U.S.C. 201–219; 29 U.S.C. 254. Pub.L. 104–188, 100 Stat. 1755.

Notes of Decisions (208)

Current through March 10, 2016; 81 FR 12604.

End of Document

United States Code Annotated
Constitution of the United States
Annotated
Article III. The Judiciary (Refs & Annos)

U.S.C.A. Const. Art. III § 2, cl. 1

Section 2, Clause 1. Jurisdiction of Courts

Currentness

<Notes of Decisions for Constitution Art. III, § 2, cl. 1, Jurisdiction of Courts, are displayed in two separate documents. Notes of Decisions for subdivisions I to VII are contained in this document. For Notes of Decisions for subdivisions VIII to end, see second document for Constitution Art. III, § 2, cl. 1, Jurisdiction of Courts.>

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S.C.A. Const. Art. III § 2, cl. 1, USCA CONST Art. III § 2, cl. 1
Current through P.L. 114-115 (excluding 114-94 and 114-95) approved 12-28-2015

End of Document

United States Code Annotated
Title 43. Public Lands (Refs & Annos)
Chapter 29. Submerged Lands
Subchapter III. Outer Continental Shelf Lands (Refs & Annos)

43 U.S.C.A. § 1332

§ 1332. Congressional declaration of policy

Currentness

It is hereby declared to be the policy of the United States that--

(1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter;

(2) this subchapter shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected;

(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;

(4) since exploration, development, and production of the minerals of the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments--

(A) such States and their affected local governments may require assistance in protecting their coastal zones and other affected areas from any temporary or permanent adverse effects of such impacts;

(B) the distribution of a portion of the receipts from the leasing of mineral resources of the outer Continental Shelf adjacent to State lands, as provided under section 1337(g) of this title, will provide affected coastal States and localities with funds which may be used for the mitigation of adverse economic and environmental effects related to the development of such resources; and

(C) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals of the outer Continental Shelf. [1]

(5) the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized; and

(6) operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.

CREDIT(S)

(Aug. 7, 1953, c. 345, § 3, 67 Stat. 462; Sept. 18, 1978, Pub.L. 95-372, Title II, § 202, 92 Stat. 634; Apr. 7, 1986, Pub.L. 99-272, Title VIII, § 8002, 100 Stat. 148.)

Footnotes

1 So in original. The period probably should be a semicolon.

43 U.S.C.A. § 1332, 43 USCA § 1332

Current through P.L. 114-115 (excluding 114-94 and 114-95) approved 12-28-2015

End of Document

CERTIFICATE OF SERVICE AND SERVICE LIST

I, Michael A. Strauss, hereby declare under penalty of perjury as follows:

I am an attorney with Strauss & Palay, APC, with offices at 121 N. Fir St., Ste F, Ventura, CA 93001. I am over the age of eighteen.

On March 17, 2016, I electronically filed the following **APPELLANT'S OPENING BRIEF** with the Ninth Circuit Court of Appeals using the Appellate ECF system, which sent notification of such filing to counsel of record, as listed below:

1. Lead Plaintiff-Appellant Brian Newton and the Putative Class:

   Michael A. Strauss, SBN 246718
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2. Defendant-Respondent Parker Drilling Management Services, Ltd. (erroneously sued as Parker Drilling Management Services, Inc.):

   Ronald J. Holland, SBN 148687
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Executed on March 17, 2016

s/
Michael A. Strauss
Attorney for Plaintiff-Appellant
Brian Newton and the Putative Class
121 N. Fir St., Ste F, Ventura, CA 93001