

Approved Monday, March 21, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY & SMALL BUSINESS

The meeting was called to order by SENATOR DAN THIESSEN at
Chairperson

1:30 ~~xxx~~/p.m. on Tuesday, March 15, 1988 in room 527-S of the Capitol.

All members were present except:

Committee staff present:

Marion Anzek, Committee Secretary
Jerry Ann Donaldson, Research Department
Gordon Self, Revisor's Department

Conferees appearing before the committee:

Representative Arthur Douville
Representative Anthony Hensley
Ray Siehndel, Labor Management Relations & Employment Standards, DHR
Wayne Maichel, representing AFL-CIO
The above conferees were proponents of HB2960

Chairman Thiessen called the meeting to order at 1:30 p.m. and said we would be hearing HB 2960, and called upon Representative Arthur Douville, Chairman of the House Labor and Industry Committee.

HB2960: An Act concerning the minimum wage and maximum hours law; increasing the minimum wage.

Representative Douville said he and Representative Hensley had worked on HB2960 together, and said they had attended a seminar in New Orleans, and one of the things that was discussed was the question of minimum wage. One of the problems with raising the minimum wage is it takes away from the worker. The norm is, if you increase your wage it takes away jobs, and I think the consensus of all of the conferees at the seminar was, infact it did not take away jobs.

The second problem that was raised, what does our wage tell the rest of the folks in the United States. Apparently \$1.60 is one of the lowest in the Nation, and we felt we would like to show the rest of the states that we are concerned with our people, so we raised the minimum wage to \$2.65 an hour. Maybe in a few years we can raise it again, but at this time we felt this to be sufficient so we can see how it works. Basically, the democrats, the republicans, and Labor and Industry all felt this was a reasonable approach at this time, and we all support the bill, and would like to see you pass it out of committee favorably.

After discussion by committee members, concerns were, how many people in Kansas this may affect, what type of people are not subject to the minimum wage and are not included in the exceptions, in the bill.

Representative Douville said the basic situation is that anybody could engage in interstate commerce, subject to the federal minimum wage, and what falls within the definition of interstate commerce is anything that goes back and forth to interstate commerce, and with respect to sales it is \$365,000.

Senator Morris said the figure is \$362,500. That was a determination made by the Feds, that says, if you do that much business you would be deemed to be in interstate commerce, because many times they can't tell, because you may or may not be selling a product that was made in Nebraska or something like that, so they said, if you do X number of dollars then, you are deemed to be subject to the Federal minimum wage.

Senator Kerr asked does that mean, like a fast food franchise that does not do that much gross business, would be subject to this law and not to the Federal minimum wage?

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS,
 room 527-S, Statehouse, at 1:30 ~~am~~/p.m. on Tuesday, March 15, 1988

Senator Morris said he was for the bill, but thinks it needs to be raised, and said that he wanted to call attention to some of the people that used to draw the very lowest minimum like people who gas cars, and people who serve salads, etc., and now you have self service. This is the way that people have always reacted to increases in the Federal minimum wage, and it does cause unemployment for those who are the most difficult to employ, such as the elderly who want to work but can't, the students and particularly the blacks who have teen age unemployment up in the 40 and 50%. It is almost impossible for these people to find jobs.

If we really want to improve the image of Kansas, what we should do is repeal the state minimum wage law. Not even have one, then you don't have \$1.60 or \$2.65, you let the market place determine the worth of a person, which is the way that it should be.

Chairman Thiessen called upon Representative Hensley.

Representative Hensley passed out two handouts to the committee members. (Attachment 1) A report by the Public Assistance Coalition of Kansas, and Representative Hensley said they are in support of HB2960, and in support of raising the Kansas minimum wage law, although they say that they prefer Kansas minimum wage be raised to a level set by the Federal Government, (On page two, there is a fact sheet about poverty in Kansas, and in the second paragraph, it states that the minimum wage has been \$3.35 per hour since 1-1-1981, while living cost have risen 27%, a full time worker at minimum wage earns \$6968. per year and this is below the poverty threshold with a family of 2, which is \$7,400. and only 75% of the poverty threshold with a family of 3. This is as it relates to the Federal minimum wage.

As far as Kansas is concerned I have also distributed to you what is called the Kansas Survival Budget. (Attachment 2)

After discussion by committee members, concerns were, why we should exempt people that are employed in Agriculture and if we did, we ought to exempt farmers.

Senator Steineger said the more money that you can put into the economy, it goes around about 7 times, so if you would take the wage to \$5.50 and multiply by 7, you would be putting a lot into the economy.

Representative Douville said it isn't just money, I have worked around agriculture, and a lot of times the farmer will get a house and a lot of other things, so it isn't just money, it might be a place to stay.

Senator Kerr said Representative Hensley it seems a lot of your argument is around the poverty with ADC, but aren't there an awfull lot of people in low paying jobs in Kansas who are not heads of households, like teenagers or single people starting out in their first position, or part time people? Don't we have to recognize that not everyone is head of a household. I would agree, for someone trying to raise children this is obviously not enough money to do it with.

Representative Hensley said the original amendment as offered on the House floor would have included taking the exemption of persons 18 years of age or less out of the law, and that amendment also included persons 60 years of age and over. As that amendment was offered, the author of the amendment dealt only with people 60 years of age and older as opposed to 18 years of age and less.

Senator Morris said the wage part is only one small portion of the Federal wage law, and obviously the disadvantage is that small hardware stores or what ever it may be, once becomes under this, then he is subject to all the other provisions of the act, not just wage, but the record keeping and this is the part that burdens them. So there are advantages and disadvantages.

Chairman Thiessen asked if most on ADC, have medical cards?

Representative Hensley said in the attachments, it deals with ADC, the LIEAP.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS,
room 527-S, Statehouse, at 1:30 ~~xxx~~ p.m. on Tuesday, March 15, 1988

program, food stamps, and I do not believe the medical card is included in that. The comparison that I was trying to deal with was strictly the cash assistance grant that is given to the recipient on ADC. Anyone working at the state minimum wage would probably be eligible for a lot of these other programs. At least food stamps, lieap fund, medical cards, and other programs that we have available for people.

After discussion by committee members concerns were the workers concern of losing their medical card, if they take a job.

Senator Daniels said in looking at the whole picture, it seems the trend today is many employers that do not pay minimum wage, is to hire two employees part time so the employer doesn't have to pay benefits like the health care. If you do have an ADC family and the parent does try to work, and gets a job, and its only part time work, the employer keeps that level just where its save, then with the higher minimum wage, that means if the employee works the full time allotted, it will very quickly push her above, rather than a part time employee, before the monthly income is even there, and because of her age, she says she can only earn just so much.

Chairman Thiessen called upon Ray Siehndel, Labor Management Relations and Employment Standards.

Ray Siehndel said he had passed out a reproduction from the Department of Labor (Attachment 3) and on page 2, I think you will find most of the answers on questions that have been asked at the Federal level here. It covers, who is covered, and page three you will find exemptions from both minimum wage and overtime pay, and sub-minimum wage provisions. Again it is a matter of interpretation. The department comes in contact with minimum wage, because of wage claims. Most of the time we just kick it over to the Feds, and we may get involved with one or two cases a month, but we see no increase in work load if the bill is passed.

Chairman Thiessen called upon Wayne Maichel, representing the AFL-CIO.

Wayne Maichel said the AFL-CIO would like to see the minimum wage match the Federal at \$3.35 an hour, but we certainly would support the proposed \$2.65 an hour Kansas minimum wage, as we support the concept of the minimum wage.

Chairman Thiessen asked Ray Siehndel if he would check and see if there is any provision there for the handicapped, and Mr. Siehndel said he would check.

Senator Morris moved to approve the minutes of February 29, 1988, and the minutes of March 01, 1988, seconded by Senator Yost. The motion to approve both sets of minutes carried.

Chairman Thiessen adjourned the meeting at 2:30 p.m.



Lifeline

A Report by the Public Assistance Coalition of Kansas

TO; Rep. Anthony Hensley

FROM: Paul Johnson

RE: HB 2960

DATE: February 22, 1988

The Public Assistance Coalition of Kansas does support raising the Kansas minimum wage to that of the level set by the Federal government. Fair wages for employment should be a given standard in Kansas. A few states have set their minimum wage at or above the Federal Government's. The Kansas Legislature has established a minimum survival budget of \$572 a month for a family of three. A new minimum wage should strive to meet this standard and keep it adjusted to inflation.

Attachment 1
Senate Labor, Industry
& Sm. Bus. 3-15-88

FACT SHEET ABOUT POVERTY IN KANSAS

According to a study recently released by the Institute for Research on Poverty at the University of Wisconsin, the official poverty rate in Kansas increased from 8.3 percent in 1979 to 13.8 percent in 1985. Kansas has the seventh highest rate of increase in poverty in the United States during the 1980s. There are now approximately 338,000 Kansans living below the poverty line. Many more are "near poor" and having difficulty making ends meet. Farmers and rural residents have been placed under particular financial stress in recent years. Nationally, the poverty rate on the farm in 1986 was 19.6 percent as compared to 13.4 percent in the general population.

Increasing numbers of poor people in Kansas are working. The minimum wage has been at \$3.35 per hour since January 1, 1981. Living costs meanwhile have risen 27 percent. A full-time worker, at minimum wage, earns \$6,968.00 per year. This is below the official poverty threshold for a family of two (\$7,400) and only 75 percent of the poverty threshold for a family of three.

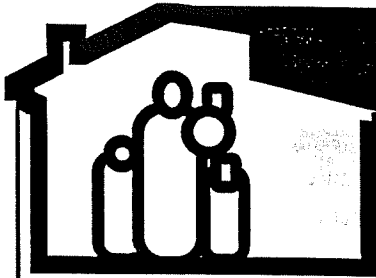
There are increasingly large numbers of people in "near poverty" categories. Approximately 50 percent of the new jobs created in the United States in the past ten years have been service sector jobs at or below minimum wage. Nearly three-fifths of the eight million new jobs created between 1979 and 1984 in the United States paid less than \$7,000 per year. Most of the new jobs in Kansas have been and will be in the low paying service sector.

Many poor families do not have health care coverage. In 1986 nearly one-third of all poor families in the United States did not have health insurance coverage. Medicaid, the health insurance program for the poor, only covers 42 percent of all poor families. In Kansas, General Assistance recipients receive medical care through MediKan, a program funded totally by the state.

The vast majority (approximately 75 percent) of those officially unemployed in Kansas do not receive unemployment benefits. Half of the people receiving General Assistance in Kansas, despite a history of full-time work, have never received unemployment benefits.

Emergency service providers of all kinds in all parts of Kansas have experienced unprecedented increases in demand for their services during the past year. Health care needs in particular are going unmet because of the small percentage of emergency care providers who offer health care services.

The Kansas legislature has adopted a minimum survival budget that is only approximately 85 percent of the official poverty threshold established by the Department of Health and Human Services. The monthly cash assistance provided through Aid to Families with Dependent Children (AFDC) to a family of three in Kansas amounts to 44 percent of the poverty threshold. The average Unrestricted General Assistance (GAU) grant in Kansas for a three person family is only 33 percent of the federal poverty income guideline.



The working poor

Four survival strategies for a family of four with one salary

Figure \$5.25 an hour X 2,080 hours = \$10,920 annual gross or \$910 monthly gross, take home about \$810

<u>Monthly Expenses</u>	No conditions	Subsidized housing (30% of adjusted income)	Old car from friend	Subsidized housing, old car, free child-care
Housing	\$300	\$180	\$300	\$180
Utilities	\$100-\$150	\$100-\$150	\$100-\$150	\$100-\$150
Telephone	\$18	\$18	\$18	\$18
Food, household supplies	\$250	\$250	\$250	\$250
Car payment	\$200	\$200	\$50	\$50
Car tags & tax	\$20	\$20	\$5	\$5
Car insurance	\$20	\$20	\$15	\$15
Gasoline & oil	\$40	\$40	\$50	\$50
Car maintenance	0	0	\$50	\$50
School fees, books	\$10	\$10	\$10	\$10
School lunches (2 children, cut rate)	\$35	\$35	\$35	\$35
Clothes, shoes	\$30-\$50	\$30-\$50	\$30-\$50	\$30-\$50
Church, charity	0	0	0	0
Entertainment, eating out	0	0	0	0
Cable TV	\$15	\$15	\$15	\$15
Medical (no insurance)	\$50	\$50	\$50	\$50
Miscellaneous (vacation, school events, etc.)	0	0	0	0
Total	\$1,088	\$968	\$978	\$843
With childcare (before/after school)	\$120	\$120	\$120	
Subtotal	\$1,208	\$1,088	\$1,098	\$843
Actual income	\$810	\$810	\$810	\$810
Monthly deficit	\$398	\$278	\$288	\$33

Source: Karen Hiller, Topeka Housing Information Center and Consumer Credit Counseling Service

Staff/Pat Marrin

second or third week of a month. The Subcommittee strongly recommends that the Department of Health and Environment refrain from imposing regulations on charitable programs serving free food to needy persons.

The House and Senate Ways and Means Committees previously established a minimum maintenance budget for a three-person household, which it thought applicable to Kansans. During FY 1986 that minimum is \$655, of which \$574 (87.6 percent) is met by various forms of assistance. The Subcommittee has reviewed and updated that minimum survival budget, as reflected below.

KANSAS SURVIVAL BUDGET

FY 1987

	<u>FY</u> <u>1986</u>	<u>FY</u> <u>1987</u>	<u>%</u> <u>Incr.</u>	<u>Annual</u>
Rent	200	200	0.0%	2,400
Food*	270	269	-0.5	3,222
Utilities	75	82	9.3	984
Phone	10	12	20.0	144
Transportation	50	50	0.0	600
Clothing	20	25	25.0	300
Miscellaneous	30	30	0.0	360
Total Standard of Need	<u>655</u>	<u>668</u>	<u>1.9%</u>	<u>8,010</u>
<u>Sources of Income</u>				
AFDC Grants	368	379	3.0%	4,548
Food Stamps	178	182	2.0	2,184
LIEAP Funds	18	18	0.0	216
Housing Subsidy	10	10	0.0	120
Total Sources	<u>574</u>	<u>589</u>	<u>2.6%</u>	<u>7,068</u>

* Exemption of the sales tax (4 percent) on food purchased with food stamps is presumed for FY 1987.

The Subcommittee is recommending a 3 percent increase in cash grants to AFDC and Unrestricted General Assistance clients. This increase, combined with exemption of food purchased with Food Stamps, results in meeting approximately 88.2 percent of the minimum survival budget during FY 1987. The Subcommittee continues to recommend that the income level be gradually increased to meet this minimum survival budget.

The monthly deficit of \$79 per household in FY 1987 results in annual unmet needs of \$21.5 million, when applied to

HISTORY OF KANSAS PUBLIC ASSISTANCE BENEFITS COMPARED TO POVERTY LEVELS
FISCAL YEARS 1975 - 1988

	HH Size	Monthly ADC Grant	Monthly Winter LIEAP Benefit	Monthly Food Stamp Benefit	Total Monthly Benefits	Federal Poverty Level Monthly-Annual	Total Benefits As a % of Poverty Level	Kansas * Minimum Need Level Monthly-Annual	Total Benefits As a % of MNL	
1975	1	157	----	38	195	215	90%			
	3	263	----	76	345	352	98%			
	5	329	----	108	437	489	89%			
1977	1	162	----	44	206	247	83%			
	3	273	----	82	361	407	88%			
	5	364	----	112	476	567	83%			
1979	1	200	----	49	249	283	87%			
	3	310	----	116	426	466	91%			
	5	390	----	162	552	650	84%			
1981	1	210	11	67	288	359	80%			
	3	328	11	145	484	589	82%			
	5	415	11	209	635	819	77%			
1983	1	216	15	70	301	405	74%	344	4,138	87%
	3	338	15	157	510	685	74%	562	6,984	87%
	5	427	15	231	673	965	69%	820	9,840	82%
1985	1	222	18	73	313	438	71%	371	4,452	84%
	3	347	18	159	524	738	71%	626	7,512	83%
	5	439	18	233	690	1,038	66%	881	10,572	78%
1986**	1	230	18	79	327	446	73%	388	4,656	84%
	3	371	18	172	561	760	74%	655	7,860	85%
	5	479	18	250	747	1,073	70%	921	11,052	81%
1987	1	232	16	81	329	458	72%	395	4,740	83%
	3	377	16	175	568	775	73%	668	8,016	85%
	5	489	16	249	754	1,091	69%	939	11,268	80%
1988 Non-Shared Living	1	234	16	81	331	467	71%	408	4,896	81%
	3	383	16	173	572	790	72%	691	8,292	83%
	5	499	16	246	761	1,113	68%	971	11,652	78%
1988 Shared Living	1	168	16	81	265	467	56%	408	4,896	64%
	3	339	16	186	541	790	68%	691	8,292	78%
	5	466	16	256	738	1,113	66%	971	11,652	76%

These grant amounts are for families with no other income.

*The Kansas Minimum Need Level as established by the House and Ways Means Committee for FY-86 and adjusted annually according to the inflation factor determined by the Kansas Consensus Revenue Estimating Group.

**Estimates from previous report revised to reflect actual 1986 levels.

Item Governor's Recommendation

\$2,084,023 is from the State General Fund for a 3.3 percent grant increase. At the FY 1989 requested caseload level, each 1 percent grant increase would cost approximately \$1.1 million of which about \$500,000 would be from the State General Fund. In recent years, AFDC cash grant increases have been as follows:

<u>Year</u>	<u>% Increase AFDC Grants</u>	<u>% Increase CPI-U</u>	<u>AFDC Maximum Grant For Family of 3 as % of Federal Poverty Level</u>	<u>% Increase in Caseload</u>
FY 1983	3.0	4.3	49.3	7.3
FY 1984	0.0	3.7	47.9	2.1
FY 1985	3.0	3.9	47.0	(6.0)
FY 1986	7.5	2.9	48.8	0.7
FY 1987	3.0*	2.2	48.7	8.0
FY 1988	1.5	4.3**	48.5	—

* AFDC cash grants were reduced by 3.8 percent for February through June, 1987 as part of the "lapse" bill. This reduction was restored in July 1987, in addition to the 1.5 percent grant increase.

** Based on first five months of FY 1988.

*** AFDC caseloads in FY 1988 appear to be stabilized based on expenditures through January.

1. **Shelter Allowances.** The FY 1989 AFDC request includes \$2,122,644, of which \$946,699 is from the State General Fund to revise the shelter standard for AFDC grants. Currently, there are 5 shelter standards ranging from \$76 to \$135 per month. Detail on these shelter standards is shown below:

1. The Governor does not recommend funding for any change in the shelter allowances.

	<u>Current</u>		<u>Proposed</u>	
	<u>No. of Counties</u>	<u>Rate</u>	<u>No. of Counties</u>	<u>Rate</u>
Group 1	26	\$ 76	--	\$ 97
Group 2	61	86	--	97
Group 3	7	97	89	97
Group 4	9	109	13	109
Group 5	2	135	3	135

Handy Reference Guide to the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting more than 73 million full-time and part-time workers in the private sector and in Federal, State, and local governments.

The Wage and Hour Division (Wage-Hour) administers and enforces FLSA with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The Office of Personnel Management is responsible for enforcement with regard to all other Federal employees.

Special rules apply to State and local government employment involving fire protection and law enforcement activities, volunteer services, and compensatory time off in lieu of cash overtime pay.

Basic Wage Standards

Covered nonexempt workers are entitled to a minimum wage of not less than \$3.35 an hour and overtime pay at a rate of not less than one and one-half times their regular rates of pay after 40 hours of work in a workweek.

Wages required by FLSA are due on the regular pay day for the pay period covered. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by FLSA or reduce the amount of overtime pay due under FLSA.

The FLSA contains some exemptions from these basic standards. Some apply to specific types of businesses; others apply to specific kinds of work.

While FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which FLSA does not regulate.

For example, FLSA does not require:

- (1) vacation, holiday, severance, or sick pay;
- (2) meal or rest periods, holidays off, or vacations;
- (3) premium pay for weekend or holiday work;
- (4) pay raises or fringe benefits;
- (5) a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees; and,
- (6) any limit on the number of hours of work for persons 16 years of age and over.

These matters are for agreement between the employer and the employees or their authorized representatives.



Who Is Covered?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person are covered by FLSA.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and is —

- (1) engaged in laundering or cleaning or repairing of clothing or fabrics; or
- (2) engaged in the business of construction or reconstruction; or
- (3) 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, a school for mentally or physically handicapped or gifted

children, a preschool, an elementary or secondary school, or an institution of higher education (whether public or private or operated for profit or not for profit); or

- (4) comprised exclusively of one or more retail or service establishments (as defined in FLSA) whose annual gross volume of sales made or business done is not less than \$362,500; or
- (5) any other type of enterprise having an annual gross volume of sales made or business done of not less than \$250,000; or
- (6) an activity of a public agency.

The dollar volume standard mentioned above in (4) and (5) excludes excise taxes at the retail level which are separately stated.

Employees of firms which are not covered enterprises under FLSA may still be subject to its minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce. Such employees include those who: work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross State lines in the course of employment; or work for independent employers who contract to do clerical, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time baby sitters are covered if they (1) receive at least \$50 in cash wages in a calendar quarter from their employers, or (2) work a total of more than 8 hours a week for one or more employers.

Tipped Employees

Tipped employees are those who customarily and regularly receive more than \$30 a month in tips.

The employer may consider tips as part of wages, but such a wage credit must not exceed 40 percent of the minimum wage.

The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. Also, employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

Employer-Furnished Facilities

The reasonable cost or fair value of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be considered part of wages.

Subminimum Wage Provisions

The FLSA provides for the employment of certain individuals at wage rates below the statutory minimum. Such individuals include student-learners (vocational education students), as well as full-time students in retail or service establishments, agriculture, or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by age or physical or mental deficiency or injury. Employment at less than the minimum wage is provided for in order to prevent the curtailment of opportunities for employment. Such employment is permitted only under certificates issued by Wage-Hour.

Exemptions

Some employees are excluded from the overtime pay provisions or both the minimum wage and overtime pay provisions by specific exemptions.

Because exemptions are generally narrowly defined under FLSA, an employer should carefully check the exact terms and conditions for

each. Detailed information is available from local Wage-Hour offices. Following are examples which are illustrative but do not spell out the conditions for each exemption.

Exemptions from Both Minimum Wage and Overtime Pay

- (1) Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), and outside sales persons (as defined in Department of Labor regulations);
- (2) Employees of certain individually owned and operated small retail or service establishments not part of a covered enterprise;
- (3) Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, switchboard operators of small telephone companies, seamen employed on foreign vessels, and employees engaged in fishing operations;
- (4) Farm workers employed by anyone who used no more than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year;
- (5) Casual babysitters and persons employed as companions to the elderly or infirm.

Exemptions from Overtime Pay Provisions Only

- (1) Certain highly-paid commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft salesworkers, or parts-clerks and mechanics servicing autos, trucks, or farm implements, and who are employed by nonmanufacturing establishments primarily engaged in selling these items to ultimate purchasers;
- (2) Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;

-
- (3) Announcers, news editors, and chief engineers of certain nonmetropolitan broadcasting stations;
 - (4) Domestic service workers residing in the employers' residences;
 - (5) Employees of motion picture theaters; and
 - (6) Farmworkers.

Partial Exemptions from Overtime Pay

- (1) Partial overtime pay exemptions apply to employees engaged in certain operations on agricultural commodities and employees of certain bulk petroleum distributors.
- (2) Hospitals and residential care establishments may adopt, by agreement with their employees, a 14-day work period in lieu of the usual 7-day workweek, if the employees are paid at least time and one-half their regular rates for hours worked over 8 in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours.

Child Labor Provisions

The FLSA child labor provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include restrictions on hours of work for minors under 16 and lists of hazardous occupations orders for both farm and nonfarm jobs declared by the Secretary of Labor as being too dangerous for minors to perform. Further information on prohibited occupations is available from local Wage-Hour offices.

Nonagricultural Jobs

Regulations governing youth employment in nonfarm jobs differ somewhat from those pertaining to agricultural employment. In nonfarm work, the permissible jobs and hours of work, by age, are as follows:

-
- (1) Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;
 - (2) Youths 16 and 17 years old may perform any nonhazardous job, for unlimited hours; and
 - (3) Youths 14 and 15 years old may work outside school hours in various nonmanufacturing, nonmining, nonhazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a nonschool day, or 40 hours in a nonschool week. Also, work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Under a special provision, youths 14 and 15 years old enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours.)

Fourteen is the minimum age for most nonfarm work. However, at any age, youths may deliver newspapers; perform in radio, television, movie, or theatrical productions; work for parents in their solely-owned nonfarm business (except in manufacturing or on hazardous jobs); or, gather evergreens and make evergreen wreaths.

Farm Jobs

In farm work, permissible jobs and hours of work, by age, are as follows:

- (1) Youths 16 years and older may perform any job, whether hazardous or not, for unlimited hours;
- (2) Youths 14 and 15 years old may perform any nonhazardous farm job outside of school hours;
- (3) Youths 12 and 13 years old may work outside of school hours in nonhazardous jobs, either with parent's written consent or on the same farm as the parents;

-
- (4) Youths under 12 years old may perform jobs on farms owned or operated by parents or, with parents' written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements.

Minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by their parents.

Recordkeeping

The FLSA requires employers to keep records on wages, hours, and other items, as specified in Department of Labor recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to both minimum wage and overtime pay provisions, the following records must be kept:

- (1) personal information, including employee's name, home address, occupation, sex, and birth date (if under 19 years of age);
- (2) hour and day when workweek begins;
- (3) total hours worked each workday and each workweek;
- (4) total daily or weekly straight-time earnings;
- (5) regular hourly pay rate for any week when overtime is worked;
- (6) total overtime pay for the workweek;
- (7) deductions from or additions to wages;
- (8) total wages paid each pay period; and
- (9) date of payment and pay period covered.

Records required for exempt employees differ from those for nonexempt workers and special information is required for homeworkers, for employees working under uncommon pay arrangements, or for employees to whom lodging or other facilities are furnished.

Terms Used in FLSA

Workweek — A workweek is a period of 168 hours during 7 consecutive 24-hour periods. It

may begin on any day of the week and any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment each workweek stands alone; there can be no averaging of 2 or more workweeks. Employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis.

Hours Worked — Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work. Also included is any additional time the employee is suffered or permitted to work.

Computing Overtime Pay

Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (excluding certain statutory exceptions). The following examples are based on a maximum 40-hour workweek.

- (1) **Hourly rate** — (regular pay rate for an employee paid by the hour). If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due.

Example: An employee paid \$3.80 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times \$3.80, or \$5.70, for each hour over 40. Pay for the week would be \$152 for the first 40 hours, plus \$22.80 for the four hours of overtime—a total of \$174.80.

- (2) **Piece rate** — The regular rate of pay for an employee paid on a piecework basis is obtained by dividing the total weekly earnings by the total number of hours worked in the same week. The employee is entitled to an additional one-half

times this regular rate for each hour over 40, plus the full piecework earnings.

Example: An employee paid on a piecework basis works 45 hours in a week and earns \$162. The regular rate of pay for that week is \$162 divided by 45, or \$3.60 an hour. In addition to the straight-time pay, the employee is entitled to \$1.80 (half the regular rate) for each hour over 40.

Another way to compensate pieceworkers for overtime, if agreed to before the work is performed, is to pay one and one-half times the piece rate for each piece produced during overtime hours.

The piece rate must be the one actually paid during nonovertime hours and must be enough to yield at least the minimum wage per hour.

(3) **Salary** — the regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours are worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week. To illustrate, suppose an employee's hours of work vary each week and the agreement with the employer is that the employee will be paid \$200 a week for whatever number of hours of work are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is \$4 (\$200 divided by 50 hours). In addition to the salary, half the regular rate, or \$2 is due for each of the 10 overtime hours, for a total of \$220 for the week. If the employee works 54 hours, the regular rate will be \$3.70 (\$200 divided by 54). In that case, an additional \$1.85 is due for each of the 14 overtime hours, for a total of \$225.90 for the week.

In no case may the regular rate be less than the minimum wage required by FLSA.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

Enforcement

Wage-Hour's enforcement of FLSA is carried out by compliance officers stationed across the U.S. As Wage-Hour's authorized representatives, they have the authority to conduct investigations and gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with FLSA. Where violations are found, they also may recommend changes in employment practices, in order to bring an employer into compliance with FLSA.

It is a violation of FLSA to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under FLSA.

Willful violations may be prosecuted criminally and the violator fined up to \$10,000. A second conviction may result in imprisonment.

Violators of the child labor provisions are subject to a civil money penalty of up to \$1,000 for each violation.

Recovery of Back Wages

Listed below are methods which FLSA provides for recovering unpaid minimum and/or overtime wages.

-
- (1) Wage-Hour may supervise payment of back wages.
 - (2) The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.
 - (3) An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.
 - (4) The Secretary of Labor may obtain an injunction to restrain any person from violating FLSA, including the unlawful withholding of proper minimum wage and overtime pay.

An employee may not bring suit if he or she has been paid back wages under the supervision of Wage-Hour or if the Secretary of Labor has already filed suit to recover the wages.

A 2-year statute of limitations applies to the recovery of back pay, except in the case of willful violation, in which case a 3-year statute applies.

Other Labor Laws

In addition to FLSA, Wage-Hour enforces and administers a number of other labor laws. Among these are:

- (1) the Davis-Bacon and Related Acts (require payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction);
- (2) the Walsh-Healey Public Contracts Act (requires payment of minimum wage rates and overtime pay on contracts to provide goods to the Federal government);
- (3) the Service Contract Act (requires payment of prevailing wage rates and fringe benefits on contracts to provide services to the Federal government);
- (4) the Contract Work Hours and Safety Standards Act (sets overtime standards for Federal service and construction contracts);

-
- (5) the Immigration Reform and Control Act (Wage-Hour is authorized to review the Immigration and Naturalization Service forms (I-9) required under the Immigration Reform and Control Act; employers must verify the employment eligibility of all individuals hired after November 6, 1986, and must keep I-9s on file for at least 3 years and for one year after an employee is terminated);
 - (6) the Migrant and Seasonal Agricultural Worker Protection Act (protects farm workers by imposing certain requirements on agricultural employers and associations; and by requiring the registration of crewleaders who must also provide the same worker protections); and
 - (7) the Wage Garnishment Law (limits amount of an individual's income that may be legally garnished and prohibits the firing of an employee whose pay is garnished for payment of a single debt).

More detailed information on FLSA and other laws administered by Wage-Hour is available from local Wage-Hour offices, which are listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration, Wage and Hour Division.

Equal Pay Provisions

The equal pay provisions of FLSA prohibit wage differentials based on sex, between men and women employed in the same establishment, on jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions. These provisions, as well as other statutes prohibiting discrimination in employment, are enforced by the Equal Employment Opportunity Commission. More detailed information is available from its offices which are listed in most telephone directories under U.S. Government.