

U.S. Laws, Acts, and Treaties

Fair Labor Standards Act

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CATEGORY: Labor and Wages

Established the federal minimum wage, a compulsory overtime system, and the prohibition of most child labor.

Beginning with Massachusetts in 1912, seventeen U.S. states had adopted minimum-wage laws by 1923. For constitutional reasons, their coverage was limited to women (and perhaps children), excluding adult men. However, the Supreme Court ruled such laws unconstitutional in *Adkins v. Children's Hospital*(1923).

WAGE-HOUR MEASURES

The disastrous Great Depression that followed 1929 brought radical economic changes under President Franklin D. Roosevelt's New Deal. Drastic deflation had induced a substantial decline in wage rates and a great increase in unemployment. Presidents Herbert Hoover and Roosevelt both favored higher wages to try to increase workers' purchasing power. There was widespread support for measures to shorten hours of work, in order to spread the work around. Bills to reduce work hours were introduced into Congress in 1933 by Senator Hugo Black and Congressman William Connery. Secretary of Labor Frances Perkins favored efforts to support or raise wages by industry boards.

All of these ideas were reflected in the administration of the National Industrial Recovery Act (NIRA) of 1933. Each of the 585 codes of fair competition adopted under NIRA contained minimum-wage provisions; although varying from one industry to another, they generally were thirty cents per hour or more and applied to men as well as women. In about one-fourth of the codes, lower minimums were provided for women. However, the NIRA was ruled unconstitutional in 1935. A number of states enacted new minimums and were aided by a Supreme Court decision in 1937 that largely reversed the *Adkins* doctrine (*West Coast Hotel Co. v. Parrish*). Of the twenty-nine state laws in force by 1941, all but two applied only to women.

An administration wage-hour bill developed by Secretary Perkins was introduced in Congress in May, 1937. Traditional opposition by organized labor to minimum-wage legislation had been reduced by the formation of an independent Congress of Industrial Organizations (CIO) in 1935. The wage-hour bill, also sponsored by Senator Black and Congressman Connery, proposed a labor standards board to set industry-specific provisions relating to wages, hours, and child labor. A new bill in 1938 provided for more uniform statutory provisions, but with some discretionary authority to be lodged in the Wage-Hour Division of the Department of Labor.

WAGE PROVISIONS

As finally adopted, the Fair Labor Standards Act (FLSA) contained two types of

minimum-wage provisions. In Section 6, statutory minimum rates were set at twenty-five cents per hour for the first year, thirty cents per hour for the following six years, and forty cents per hour beginning in 1945. Sections 5 and 8 authorized the "wage-hour administrator" to establish industry wage committees that could recommend minimum hourly rates to be at least twenty-five cents in the first year and thirty cents thereafter, but not to exceed forty cents. The committees, composed of representatives of employers, workers, and government officials, would make recommendations to the administrator. Through 1940, such committees had made recommendations for a dozen industries, mainly involving clothing and textiles. However, the rapid rise in wages during World War II rendered them obsolete, and they were abolished in 1949.

The minimum-wage provisions applied generally to employees "engaged in commerce or in production of goods for commerce." Many sectors were exempted, notably agriculture and local retailing and service trades. Partial coverage applied to construction, wholesale trade, and agricultural processing. The administrator was empowered to permit subminimum wages for learners, apprentices, messengers, and workers with disabilities. No differentials were permitted between men and women. However, a large proportion of female workers were excluded by the exemption of trade and services.

Actions to enforce the law against employers paying low wages could be initiated either by the affected worker (or a union representing him or her) or by the government. Workers could sue employers for the amount they should have been paid and could collect damages of an equal amount, totaling to double damages. The Wage-Hour Division of the Department of Labor could initiate actions against employers, seeking either civil or criminal penalties.

It is estimated that in 1941, more than fourteen million workers were covered, about one-fourth of the labor force. An estimated 350,000 covered workers were paid less than the twenty-five-cent minimum in 1938 and about 900,000 received less than the thirty-cent minimum in 1939.

One goal of the law was to shorten the number of hours worked by individual workers, so that work could be spread more widely to help reduce unemployment. The law provided that employers had to pay one and a half times the basic hourly rate for hours worked by an individual in excess of forty-four per week in the first year, forty-two per week the second, and forty per week beginning in 1940. However, many categories of administrative and professional workers were excluded from these provisions. Industries with pronounced seasonal patterns of operation could obtain from the administrator permission to have individuals work as much as fifty-six hours per week and twelve hours per day for as much as fourteen weeks without paying overtime.

CHILD LABOR PROVISIONS

The law also brought to completion a long effort to secure federal legislation limiting child labor. Most states had some restrictions on the employment of children, particularly in night work or hazardous industries. A federal law in 1916 had prohibited shipment in interstate commerce of goods produced in violation of detailed child labor conditions regarding age, employment sector, and hours worked.

The Supreme Court ruled this unconstitutional in 1918 (*Hammer v. Dagenhart*). Congress responded by reenacting similar provisions to be enforced by a tax, but this also was struck down by the Supreme Court (*Bailey v. Drexel Furniture*, 1922). Congress then passed a constitutional amendment authorizing federal regulation of child labor, but by 1941, only twenty-eight states had ratified it.

Encouraged by the changed tone of Supreme Court rulings in 1937, Congress enacted Section 12 of the FLSA to forbid interstate shipment of goods produced using workers under sixteen years of age, with the exception of children working for their parents or working in sectors designated by the administrator as acceptable. Supreme Court approval came in *U.S. v. Darby Lumber Co.* (1941).

MINIMUM WAGE INCREASES

The inflation of the 1940's carried actual wages well above the minimum. Many workers benefited from the premium pay for overtime, as wartime prosperity increased employment and work hours. Congress raised the minimum wage in 1949 and numerous times thereafter, bringing the level to \$4.35, beginning in 1989. In 1996, Congress voted to increase the level to \$5.25. For most of its history to that time, the minimum wage was 40 to 50 percent of average wages. Large increases in coverage were mandated in 1961 and 1967. Coverage of private, nonfarm employment rose from about 61 percent in 1950 to 69 percent in 1961, 83 percent in 1967, and 86 percent in 1978. Most sectors with concentrated female employment were covered by then.

By 1977, coverage of domestic service reached 64 percent of workers, other services 74 percent, and retail trade 79 percent. State laws extended coverage still further. However, enforcement against small firms was loose, and employers of waitpersons were permitted to claim anticipated tips as part of their compliance. In addition, the mid-1980's saw a decline of an annual minimum-wage income to below the poverty level as defined by the U.S. government. In 1989, amendments to the FLSA eliminated minimum-wage and overtime exemptions for small businesses and raised the minimum wage to \$3.80 per hour. The minimum wage went up to 4.25 per hour in 1991, \$4.75 in 1996, and \$5.15 in September of 1997; there was a push to increase it again, to \$6.15, in 2001. The basic minimum wage typically varies by age, type of occupation, and type of compensation.

ARGUMENTS PRO AND CON

Arguments in favor of increasing the minimum wage typically revolve around the expected increase in buying power among consumers and therefore a positive impact on economic growth. Other arguments in favor of increase point to social equity and the discrepancies between "minimum" and "living" wages, particularly the concern over the wage dipping below the poverty line.

Some economists believe that the statutory minimum wage tends to raise wage levels slightly but to decrease employment opportunities. The requirement to pay higher wages can drive some firms out of business, cause others to decrease output and employment, and encourage others to find labor-saving procedures. Wages in uncovered sectors can be reduced by workers displaced from the covered sector. Thus, women's wages may have been adversely affected prior to the late 1970's. Studies in the 1990's suggested impacts only on teenage workers of both genders.

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SOURCES FOR FURTHER STUDY

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SEE ALSO: National Industrial Recovery Act (1933); National Labor Relations Act (1935); Social Security Act (1935); Labor-Management Relations Act(1947); Occupational Safety and Health Act (1970).