DCWAGELAW
LAW OFFICE OF JUSTIN ZELIKOVITZ


DCWageLaw Guide to

Wage & Hour Laws In D.C. & Md.

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District of Columbia Wage Payment and Collection Law

"DCWPCL"[1]

D.C. Code §§ 32-1301 – 32-1312

§ 32-1301. Definitions.

Whenever used in this chapter:

(1) "Administrative Law Judge" means an administrative law judge of the Office of Administrative Hearings, established by § 2-1831.02.

(1A) "Attorney General" means the Attorney General for the District of Columbia, as established by § 1-204.35.

(1B) "Employer" includes every individual, partnership, firm, general contractor, subcontractor, association, corporation, the legal representative of a deceased individual, or the receiver, trustee, or successor of an individual, firm, partnership, general contractor, subcontractor, association, or corporation, employing any person in the District of Columbia; provided, that the word "employer" shall not include the government of the United States, the government of the District of Columbia, or any agency of either of said governments, or any employer subject to the Railway Labor Act (45 U.S.C. § 151 et seq.).

(2) "Employee" shall include any person suffered or permitted to work by an employer.

(2A) "Living Wage Act" means subchapter X-A of Chapter 2 of Title 2 [§ 2-220.01 et seq.].

(2B) "Minimum Wage Revision Act" means Chapter 10 of this title [§ 32-1001 et seq.].

(2C) "Sick and Safe Leave Act" means subchapter III of Chapter 5 of this title [§ 32-531.01 et seq.].

(3) "Wages" means all monetary compensation after lawful deductions, owed by an employer, whether the amount owed is determined on a time, task, piece, commission, or other basis of calculation. The term "wages" includes a:

(A) Bonus;

(B) Commission;

(C) Fringe benefits paid in cash;

(D) Overtime premium; and

(E) Other remuneration promised or owed:

1 Also known as: the Wage Payment and Collection Law ("WPCL"), the District of Columbia Wage Payment Law ("DCWPL"), and the District of Columbia Wage Law ("DCWL")

(i) Pursuant to a contract for employment, whether written or oral;

(ii) Pursuant to a contract between an employer and another person or entity; or

(iii) Pursuant to District or federal law.

(4) "Mayor" means the Mayor of the District of Columbia or his designated agent or agents.

(5) "Working day" means any day exclusive of Saturdays, Sundays, or legal holidays.

§ 32-1302. When wages must be paid; exceptions.

An employer shall pay all wages earned to his or her employees on regular paydays designated in advance by the employer and at least twice during each calendar month; except, that all bona fide administrative, executive, and professional employees (those employees employed in a bona fide administrative, executive, or professional capacity, as defined in section 7-999.1 of the District of Columbia Municipal Regulation (7 DCMR § 999.1)) shall be paid at least once per month; provided, however, that an interval of not more than 10 working days may elapse between the end of the pay period covered and the regular payday designated by the employer, except where a different period is specified in a collective agreement between an employer and a bona fide labor organization; provided further, that where, by contract or custom, an employer has paid wages at least once each calendar month, he may lawfully continue to do so. Wages shall be paid on designated paydays in lawful money of the United States, or checks on banks payable upon demand by the bank upon which drawn.

§ 32-1303. Payment of wages upon discharge or resignation of employee and upon suspension of work; employer's liability for failure to make such payment.

Unless otherwise specified in a collective agreement between an employer and a bona fide union representing his employees:

(1) Whenever an employer discharges an employee, the employer shall pay the employee's wages earned not later than the working day following such discharge; provided, however, that in the instance of an employee who is responsible for monies belonging to the employer, the employer shall be allowed a period of 4 days from the date of discharge or resignation for the determination of the accuracy of the employee's accounts, at the end of which time all wages earned by the employee shall be paid.

(2) Whenever an employee (not having a written contract of employment for a period in excess of 30 days) quits or resigns, the employer shall pay the employee's wages due upon the next regular

payday or within 7 days from the date of quitting or resigning, whichever is earlier.

(3) When work of an employee is suspended as a result of a labor dispute, the employer shall pay to such employee not later than the next regular payday, designated under § 32-1302, wages earned at the time of suspension.

(4) If an employer fails to pay an employee wages earned as required under paragraphs (1), (2), and (3) of this section, such employer shall pay, or be additionally liable to, the employee, as liquidated damages, 10 per centum of the unpaid wages for each working day during which such failure shall continue after the day upon which payment is hereunder required, or an amount equal to treble the unpaid wages, whichever is smaller.

(5) A subcontractor, including any intermediate subcontractor, and the general contractor shall be jointly and severally liable to the subcontractor's employees for the subcontractor's violations of this chapter, the Living Wage Act, and the Sick and Safe Leave Act. Except as otherwise provided in a contract between the subcontractor and the general contractor, the subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties, or attorneys' fees owed as a result of the subcontractor's violations of this chapter, the Living Wage Act, and the Sick and Safe Leave Act, unless those violations were due to the lack of prompt payment in accordance with the terms of the contract between the general contractor and the subcontractor.

(6) When a temporary staffing firm employs an employee who performs work on behalf of or to the benefit of another employer pursuant to a temporary staffing arrangement or contract for services, both the temporary staffing firm and the employer shall be jointly and severally liable for violations of this chapter, the Living Wage Act, and the Sick and Safe Leave Act to the employee and to the District. The District, the employee, or the employee's representative shall notify the temporary staffing firm and employer of the alleged violations at least 30 days before filing a claim for these violations. Except as otherwise provided in a contract between the temporary staffing firm and its client, the temporary staffing firm shall indemnify its client for any wages, damages, interest, penalties, or attorneys' fees owed as a result of the temporary staffing firm's violations of this chapter, the Living Wage Act, and the Sick and Safe Leave Act.

§ 32-1304. Unconditional payment of wages conceded to be due.

In case of a bona fide dispute concerning the amount of wages due, the employer shall give written notice to the employee of the amount of wages which he

concedes to be due, and shall pay such amount, without condition, within the time required by §§ 32-1302 and 32-1303; provided, however, that acceptance by the employee of any payment made hereunder shall not constitute a release as to the balance of his claim. The employee or Mayor shall be able to pursue any such balance of unpaid wages and related damages, interest, costs, and penalties.

§ 32-1305. Provisions of law may not be waived.

(a) Except as herein provided, no provision of this chapter shall in any way be contravened or set aside by private agreement.

(b) In enforcing the provisions of this chapter, the remuneration promised by an employer to an employee shall be presumed to be at least the amount required by federal law, including federal law requiring the payment of prevailing wages, or by District law.

§ 32-1306. Enforcement, records and subpoenas.

(a)

(1) The Mayor shall enforce and administer the provisions of this chapter, the Living Wage Act, the Sick and Safe Leave Act, and the Minimum Wage Revision Act, including by conducting sua sponte and complaint-initiated investigations into whether violations have occurred, holding hearings, and instituting actions for penalties. Any and all prosecutions of violations of this chapter, the Living Wage Act, the Minimum Wage Revision Act, or the Sick and Safe Leave Act undertaken in court shall be conducted in the name of the District of Columbia by the Office of the Attorney General.

(2)

(A) The Attorney General, acting in the public interest, including the need to deter future violations, may bring a civil action in a court of competent jurisdiction against an employer or other person violating this chapter, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act for restitution or for injunctive, compensatory, or other authorized relief for any individual or for the public at large. Upon prevailing in court, the Attorney General shall be entitled to:

(i) Reasonable attorneys' fees and costs;

(ii) Statutory penalties equal to any administrative penalties provided by law; and

(iii) On behalf of an aggrieved employee:

(I) The payment of back wages unlawfully withheld;

(II) Additional liquidated damages equal to treble the back wages unlawfully withheld; and

(III) Equitable relief as may be appropriate.

(B) The Attorney General shall not in any action brought pursuant to this section be awarded an amount already recovered by an employee.

(a-1) The Mayor shall encourage reporting pursuant to this section by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or other person reporting a violation during the course of any investigation; provided, that with the authorization of such person, the Mayor may disclose the employee or person's name and identifying information as necessary to conduct a hearing and enforce this chapter or other employee protection laws, including the Living Wage Act, the Minimum Wage Revision Act, or the Sick and Safe Leave Act.

(b)

(1) The Mayor shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony and to take depositions and affidavits in any proceedings before him.

(2) The Attorney General shall have the power to investigate whether there are violations of this chapter, the Living Wage Act, the Sick and Safe Leave Act, or the Minimum Wage Revision Act, and administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony and to take depositions and affidavits in connection with any such investigation.

(c) A person to whom a subpoena authorized by this section has been issued shall have the opportunity to move to quash or modify the subpoena in the Superior Court of the District of Columbia. In case of failure of a person to comply with any subpoena lawfully issued under this section, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of the Superior Court of the District of Columbia, or any judge thereof, upon application by the Mayor or the Attorney General, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the Court or a refusal to testify therein.

(d)

(1) Every employer subject to any provision of this chapter or of any regulation or order issued pursuant to this chapter shall make, keep,

and preserve, for a period of not less than 3 years, or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this chapter, whichever is greater, a record of:

(A) The name, address, and occupation of each employee;

(B) A record of the date of birth of an employee under 19 years of age;

(C) The rate of pay and the amount paid each pay period to each employee;

(D) The precise time worked each day and each workweek by each employee, except for employees who are not paid on an hourly basis and who are exempt from the minimum wage and overtime requirements under § 32-1004(a); and

(E) Any other records or information as the Mayor may prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this chapter.

(2)

(A) Pursuant to the investigative authority conferred upon the Mayor and the Attorney General in subsections (a) and (b)(2) of this section, respectively, and notwithstanding any other provision of law, any records an employer maintains pursuant to the requirements of this chapter, the Living Wage Act, the Sick and Safe Leave Act, and the Minimum Wage Revision Act shall be open and made available for inspection or transcription by the Mayor, the Mayor's authorized representative, or the Office of the Attorney General upon demand at any reasonable time. An employer shall furnish to the Mayor, the Mayor's authorized representative, or the Office of the Attorney General on demand a sworn statement of records and information upon forms prescribed or approved by the Mayor or Attorney General.

(B) No employer may be found to be in violation of subparagraph (A) of this paragraph unless the employer had an opportunity to challenge the Mayor or Attorney General's demand before a judge, including an administrative law judge.

(e) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the:

(1) Date of the wage payment;

(2) Gross wages paid;

(3) Deductions from and additions to wages;

(4) Net wages paid;

(5) Hours worked during the pay period; and

(6) Any other information as the Mayor may prescribe by regulation.

§ 32-1306.01. Training.

(a) Each business owner or operator who employs an employee who is paid in accordance with § 32-1003(f) shall attend either in-person or online, on a yearly basis, at least one training on the requirements of this chapter.

(b) Each manager who is employed by an employer that employs an employee who is paid in accordance with § 32-1003(f) shall attend in-person, on a yearly basis, at least one training on the requirements of this chapter.

(c) Each employer that employs an employee who is paid in accordance with § 32-1003(f) shall offer, at least once annually, its employees the opportunity to attend in person or to complete online at least one training on the requirements of this chapter.

(d) [Not funded].

§ 32-1307. Penalties.

(a)

(1) An employer who negligently fails to comply with the provisions of this chapter or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall be fined:

(A) For the first offense, an amount per affected employee of not more than $2,500; and

(B) For any subsequent offense, an amount per affected employee of not more than $5,000.

(2) An employer who willfully fails to comply with the provisions of this chapter or the Living Wage Act shall be guilty of a misdemeanor and, upon conviction, shall:

(A) For the first offense, be fined not more than $5,000 per affected employee, or imprisoned not more than 30 days; or

(B) For any subsequent offense, be fined not more than $10,000 per affected employee, or imprisoned not more than 90 days.

(3) The fines set forth in paragraphs (1) and (2) of this subsection shall not be limited by § 22-3571.01.

(b)

(1) In addition to and apart from any other penalties or remedies

provided for in this chapter or the Living Wage Act, the Mayor shall assess and collect administrative penalties as follows:

(A) For the first offense, $50 for each employee or person whose rights under this chapter or the Living Wage Act are violated for each day that the violation occurred or continued; or

(B) For any subsequent offense, $100 for each employee or person whose rights under this chapter or the Living Wage Act are violated for each day that the violation occurred or continued.

(2) In addition to the administrative penalties set forth in paragraph (1) of this subsection, the Mayor shall collect administrative penalties in the amounts set forth below for the following violations:

(A) Five hundred dollars for failure to provide notice of investigation to employees as required by § 32-1308.01(c)(2); and

(B) Five hundred dollars for failure to post notice of violations to the public, as required by § 32-1308.01(h)(2).

(3) This subsection shall not be construed to affect the Sick and Safe Leave Act or the Minimum Wage Revision Act.

(c) No administrative penalty may be collected unless the Mayor has provided any person alleged to have violated any of the provisions of this section notification of the violation, notification of the amount of the administrative penalty to be imposed, and an opportunity to request a formal hearing held pursuant to Chapter 5 of Title 2 [§ 2-501 et seq.] and § 32-1308.01. If a formal hearing is requested pursuant to § 32-1308.01(e), the Mayor shall issue a final order following the hearing, containing a finding that a violation has or has not occurred. If a hearing is not requested, the person to whom notification of violation was provided shall transmit to the Mayor the amount of the penalty within 15 days following notification.

(d) The fines set forth in this section shall not be limited by § 22-3571.01.

§ 32-1307.01. Wage Theft Prevention Fund.

(a) There is established as a special fund the Wage Theft Prevention Fund ("Fund"), which shall be administered by the Department of Employment Services in accordance with subsection (c) of this section.

(b) The Fund shall consist of the revenue from the following sources recovered under § 32-1307:

(1) Civil fines; and

(2) Administrative penalties.

(c) The Fund shall be used to enforce the provisions of this chapter, the

Minimum Wage Revision Act, the Sick and Safe Leave Act, and the Living Wage Act.

(d)

(1) The money deposited into the Fund, and interest earned, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

(2) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.

§ 32-1308. Civil actions.

(a)

(1)

(A) Subject to subparagraph (B) of this paragraph, a person aggrieved by a violation of this chapter, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act may bring a civil action in a court of competent jurisdiction against the employer or other person violating this chapter, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and entitled to relief including:

(i) The payment of any back wages unlawfully withheld;

(ii) Liquidated damages equal to treble the amount of unpaid wages;

(iii) Statutory penalties; and

(iv) Such legal or equitable relief as may be appropriate, including reinstatement of employment, and other injunctive relief.

(B) No person in any action brought pursuant to this section shall be awarded any amount already recovered by an employee.

(C) Actions may be maintained by one or more employees, who may designate an agent or representative to maintain the action for themselves, or on behalf of all employees similarly situated as follows:

(i) Individually by an aggrieved person;

(ii) Jointly by one or more aggrieved persons;

(iii) Consistent with the collective action procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b);

(iv) As a class action;

(v) Initially as a collective action pursuant to the procedures of the Fair Labor Standards Act, 29 U.S.C. § 216(b), and subsequently as a class action;

(vi) By a labor organization or association of employees whose member is aggrieved by a violation of this chapter, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act; or

(vii) By the Attorney General for the District of Columbia, pursuant to § 32-1306.

(2) For the purposes of this subsection, 2 or more employees are similarly situated if they:

(A) Are or were employed by the same employer or employers, whether concurrently or otherwise, at some point during the applicable statute of limitations period;

(B) Allege one or more violations that raise similar questions as to liability; and

(C) Seek similar forms of relief.

(3) Employees shall not be considered dissimilar under this subsection solely because their:

(A) Claims seek damages that differ in amount; or

(B) Job titles or other means of classifying employees differ in ways that are unrelated to their claims.

(b)

(1) The court, in any action brought under this section shall, in addition to any judgment awarded to the prevailing plaintiff or plaintiffs, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees, to be paid by the defendant. In any judgment in favor of any employee under this section, and in any proceeding to enforce such a judgment, the court shall award to each attorney for the employee an additional judgment for costs, including attorney's fees computed pursuant to the matrix approved in Salazar v. District of Columbia, 123 F.Supp.2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for attorney's services. The court shall use the rates in effect at the time the determination is made.

(2) If the fees remain unpaid to the attorney at the time of any subsequent review, supplementation, or reconsideration of the fee award, the court shall update the award to reflect the hours actually expended and the market rates in effect at that time. No

reduction shall be made from this rate, or from the hours actually expended, except upon clear and convincing evidence that the reduction will serve the remedial purposes of this law. Any court reviewing such a reduction shall review it de novo.

(3) Costs shall also include expert witness fees, depositions fees, witness fees, juror fees, filing fees, certification fees, the costs of collecting and presenting evidence, and any other costs incurred in connection with obtaining, preserving, or enforcing the judgment or administrative order.

(4) The District shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with any action or proceeding under this section.

(c)

(1) Any action commenced in a court of competent jurisdiction on or after February 26, 2015, to enforce any cause of action for unpaid wages or liquidated damages under this chapter, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act, or any regulation issued pursuant to this chapter, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act, must be commenced within 3 years after the cause of action accrued, or of the last occurrence if the violation is continuous, or the cause of action shall be forever barred.

(2) This period is tolled:

(A) From the date the employee files an administrative complaint with the Mayor until the Mayor notifies the employee in writing that the administrative complaint has been resolved or until the administrative complaint is withdrawn by the employee, whichever is sooner; or

(B) During any period that the employer fails to provide the complainant with actual or constructive notice of the employee's rights.

§ 32-1308.01. Administrative actions on employee complaints.

(a) When an employee requests administrative enforcement of this chapter, the Minimum Wage Revision Act, the Living Wage Act, and the Sick and Safe Leave Act, the Mayor shall investigate and make an initial determination regarding alleged violations. A physically or electronically signed complaint for non-payment of earned wages shall be filed with the Mayor, no later than 3 years after the last date upon which the violation of this chapter, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act is alleged to have occurred or the date on which the employer provided the complainant with actual or constructive notice of the employee's rights, whichever is later.

(b) If the alleged non-payment of earned wages violation is ongoing at the time of the filing of the complaint, the complaint may also seek recovery of amounts that accrue after the filing of the complaint. With regard to amounts that were due at the time the complaint was filed, an aggrieved employee may recover only those amounts that became lawfully due and payable within the 3-year period before the date the complaint was filed. This period is tolled during any period that the employer fails to provide the complainant with actual or constructive notice of the employee's rights or on other equitable grounds.

(1) The complaint shall set forth the facts upon which it is based with sufficient specificity to determine both that an allegation of non-payment of earned wages has been made and that the other criteria stated in this section have been met.

(2) In addition to the other requirements of the complaint set forth in this section, the complaint shall be sworn and shall include or attach the following information:

(A) The complainant's name, address, and telephone number (or alternate address or telephone number if the complainant desires);

(B) Sufficient information to enable the Mayor to identify the employer through District records, such as the employer's name, business address, license plate number, or telephone number; and

(C) An explanation of the alleged violations, which may include the approximate or actual dates the violations occurred, the estimated total dollar amount of unpaid wages, and an explanation of how the total estimated amount of unpaid wages was calculated.

(3) The Mayor shall request additional information from the complainant to:

(A) Amend a charge deemed insufficient;

(B) Cure technical defects or omissions;

(C) Clarify or amplify allegations; or

(D) Ensure that any violations related to or arising out of the subject matter set forth or attempted to be set forth in the original charge are adequately alleged in the complaint.

(c)

(1) The Mayor shall serve the complaint and a written notice to each respondent upon completion. The written notice shall set forth the damages, penalties and other costs for which the respondent may be liable, the rights and obligations of the parties, and the process

for contesting the complaint.

(2) The Mayor shall also include an additional notice to employees stating that an investigation is being conducted and providing information to employees on how they may participate in the investigation. Upon receipt of service, the respondent shall post this additional notice for a period of at least 30 days.

(3) Within 20 days of the date the complaint and written notice are served, the respondent shall:

(A) Admit that the allegations in the complaint are true and pay to complainant any unpaid wages or compensation and liquidated damages owed and pay to the Mayor any fine or penalty assessed; or

(B) Deny the allegations in the complaint and request that the agency make an initial determination regarding the allegations in the complaint.

(4) If a respondent admits the allegation, the Mayor shall issue an administrative order requiring the respondent to provide relief, including the payment of any back wages unlawfully withheld, liquidated damages equal to the amount of unpaid wages, reasonable attorney fees and costs, and other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief, and which may include statutory penalties. The Mayor or Attorney General may also proceed with an audit or subpoena to determine if the rights of employees other than the complainant have also been violated.

(5) If a respondent denies the allegations, the respondent must notify the Mayor of that decision and may provide any written supporting evidence within 20 days of the date the complaint is served.

(6) If a respondent fails to respond to the allegations within 20 days of the date the complaint is served, the allegations in the complaint shall be deemed admitted and the Mayor shall issue an initial determination requiring the respondent to provide relief including the payment of any back wages unlawfully withheld, liquidated damages equal to treble the amount of unpaid wages, statutory penalties, reasonable attorney fees and costs, other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief.

(7) The Mayor shall issue an initial determination within 60 days after the date the complaint is served. The initial determination shall set forth a brief summary of the evidence considered, the findings of fact, the conclusions of law, and, where the Mayor finds in favor of the complainant, the initial determination shall require the respondent to provide relief, including the payment of any back wages

unlawfully withheld, liquidated damages equal to treble the amount of unpaid wages, statutory penalties, reasonable attorney fees and costs, and other legal or equitable relief as may be appropriate, including reinstatement in employment, and other injunctive relief. The initial determination shall be provided to both parties and set forth the losing party's right to appeal under this section or to seek other relief available under this chapter.

(8) In addition to determining whether the complainant has demonstrated that the employer has violated one or more provisions of this chapter, or the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act, by applying the presumption required by § 32-1305(b), the Mayor shall make an initial determination of whether the complainant is entitled to additional unpaid earned wages due to other District laws such as the Living Wage Act, the Sick and Safe Leave Act, or the Minimum Wage Revision Act.

(9) If the Mayor fails to issue an initial determination within 60 days of the serving of a complaint, the complainant shall have a right to request a formal hearing before an administrative law judge.

(10)

(A) Upon issuance of an initial determination or administrative order, not issued as a result of conciliation, the Mayor shall notify the parties, by certified mail, of their right to file for a formal hearing before an administrative law judge pursuant to subsection (e) of this section.

(B) If a party does not timely file for a formal hearing before an administrative law judge pursuant to subsection (e) of this section, the initial determination shall be deemed a final administrative order and shall be enforceable pursuant to subsection (g) of this section.

(d)

(1) The Mayor shall work with the parties in an attempt to conciliate. Any conciliation agreement shall be between the respondent and the complainant and shall be reduced to an administrative order requiring the respondent to pay any unpaid wages, compensation, liquidated damages, and fine or penalty owed and requiring the respondent to cure any violations.

(2) When an administrative order issued as a result of a conciliation agreement is subsequently breached, the Mayor or the complainant may enforce the administrative order pursuant to this section.

(e)

(1) Within 30 days of the issuance of the initial determination or an

administrative order, not issued as a result of conciliation, or within 30 days of receiving notice of a right to file for a formal hearing before an administrative law judge under this subsection, whichever is later, a party may file for a formal hearing before an administrative law judge. If the initial determination was not issued within the 60-day period specified in subsection (c)(7) of this section, a complainant may file for a formal hearing before an administrative law judge. An administrative law judge shall conduct a hearing to determine whether a violation of this chapter or the Minimum Wage Revision Act, the Living Wage Act, or the Sick and Safe Leave Act has occurred. The hearing shall be scheduled within 30 days of a request, except that the administrative law judge may grant each party one discretionary continuance due to hardship or scheduling of up to 15 days. The administrative law judge may grant any other request for continuance only for good cause.

(2) The administrative law judge shall have the authority to administer oaths, issue subpoenas, compel the production of evidence, receive evidence, and consolidate 2 or more complaints into a single hearing where such complaints involve sufficiently similar allegations of fact to justify consolidation.

(3) All parties shall appear at the hearing, with or without counsel, and may submit evidence, cross-examine witnesses, obtain issuance of subpoenas, and otherwise be heard. Testimony taken at the hearing shall be under oath, and a transcript shall be made available at cost to any individual unless the case is sealed. Testimony may also be given and received by telephone.

(4) The burden of proof by a preponderance of the evidence shall rest upon the complainant, but shall shift to the respondent when the following conditions are met:

(A) A respondent failed to keep records of an employee's hours worked, or records of compensation provided to an employee are imprecise, inadequate, missing, fraudulently prepared or presented, or are substantially incomplete; and

(B) A complainant presents evidence to show, as a matter of just and reasonable inference, the amount of work done or the extent of work done or what compensation is due for the work done.

(5) Where the conditions in paragraph 4(A) and (B) of this subsection are met, the respondent must present compelling evidence of the Superior Court of the District all have the right to inquire about and receive information regarding the status of the enforcement action.

(h) If a respondent fails to timely comply with an administrative order or conciliation agreement that has not been stayed, the Mayor shall:

(1) Assess an additional late fee equal to 10% of the total amount owed for each month any portion of the award and any already accrued late penalty remains unpaid;

(2) Require the respondent to post public notice of their failure to comply in a form determined by the Mayor; and

(3) Consider any unpaid amount to be owed the District as past due restitution on behalf of an employee and suspend any licenses issued to do business in the District as set forth in subsection (i) of this section. Penalty amounts, including civil and criminal penalties and late fees, and any wages, damages, interest, costs, or fees awarded to an employee or representative shall be a lien upon the real estate and personal property of the person who owes them. The lien shall take effect by operation of law on the day immediately following the due date for payment, and, unless dissolved by payment, shall as of that date be considered a tax due and owing to the District, which may be enforced through any and all procedures available for tax collection.

(i) The Mayor shall:

(1) Deny an application for any license to do business issued by the District if, during the 3-year period before the date of the application, the applicant admitted guilt or liability or has been found guilty or liable in any judicial or administrative proceeding of committing or attempting to commit a willful violation of this chapter, the Minimum Wage Revision Act, the Living Wage Act, or the Sick and Safe Leave Act, or any other District, federal, or state law regulating the payment of wages. This subparagraph shall not apply to any person whose final administrative adjudication or judicial judgment or conviction was entered before February 26, 2015; and

(2) Suspend any license to do business issued by the District if the licensee has failed to comply with an administrative order or conciliation agreement issued under this section. Once alerted to an alleged lack of compliance, the Mayor shall notify the business that its license will be suspended in 30 days until the business provides proof that it is in full compliance with the administrative order or conciliation agreement, including any requirements for accelerated payment, interest, or additional damages in the event of a breach. Before the license suspension, the business will have an opportunity to request a hearing to be held pursuant to the Administrative Procedure Act.

(j) The administrative remedies established in this chapter shall be in addition to any other criminal, civil, or other remedies established by law that may be pursued to address violations of this chapter and shall not prejudice or adversely affect any other action, civil or criminal, that may

be brought to abate a violation or to seek compensation for damages suffered.

(k) Any person may be represented by counsel in any proceeding under this chapter. Any party, including corporate entities, as an alternative to counsel, may be assisted by a non-lawyer authorized by that party in accordance with 1 DCMR § 2835, except where such representation is prohibited by law or disallowed by the administrative law judge for good cause.

(l)

(1) Any party may request that a subpoena be issued by the administrative law judge. Witnesses summoned by subpoena shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the Superior Court of the District of Columbia. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by that party.

(2) Within 10 days after service of a subpoena upon any person, the person may petition the administrative law judge to quash or modify the subpoena. The administrative law judge shall grant the petition if he or she finds that the subpoena:

(A) Requires appearance or attendance at an unreasonable time or place;

(B) Requires production of evidence that does not relate to the matter; or

(C) Does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

(3) In the case of refusal to obey a subpoena, the administrative law judge or any party may seek enforcement of a subpoena issued under the authority of this chapter by filing a petition for enforcement in a court of competent jurisdiction. In the enforcement proceeding, the court may award to the party prevailing in the enforcement proceeding all or part of the costs and attorney's fees incurred in obtaining the enforcement order.

(4) Any person who fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, without good cause, may be fined by a court of competent jurisdiction not more than the amount set forth in § 22-3571.01 or imprisoned not more than 60 days, or both.

(5) Any person who makes or causes to be made any false entry or false statement of fact in any report, account, record, or other document submitted to the administrative law judge pursuant to its subpoena or other order, or who willfully mutilates, alters, or by

any other means falsifies any documentary evidence, may be fined by a court of competent jurisdiction not more than the amount set forth in § 22-3571.01 or imprisoned not more than 60 days, or both.

(m)

(1) The administrative law judge, in any action brought under this section shall, in addition to any administrative order awarded to the prevailing plaintiff, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees, to be paid by the defendant. In any administrative order in favor of any employee under this section, and in any proceeding to enforce an administrative order, the court shall award to each attorney for the employee an additional judgment for costs, including attorney's fees computed pursuant to the matrix approved in Salazar v. District of Columbia, 123 F.Supp.2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for attorney's services. The administrative law judge shall use the rates in effect at the time the determination is made.

(2) If the fees remain unpaid to the attorney at the time of any subsequent review, supplementation, or reconsideration of the fee award, the administrative law judge shall update the award to reflect the hours actually expended and the market rates in effect at that time. No reduction shall be made from this rate, or from the hours actually expended, except upon clear and convincing evidence that the reduction will serve the remedial purposes of this law.

(3) Costs shall also include expert witness fees, depositions fees, witness fees, juror fees, filing fees, certification fees, the costs of collecting and presenting evidence, and any other costs incurred in connection with obtaining, preserving, or enforcing the administrative order.

(4) The District shall not be required to pay the filing fee or other costs or fees of any nature or to file bond or other security of any nature in connection with any action or proceeding under this section.

(n) Appeals of any order issued under this chapter, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act shall be made to the District of Columbia Court of Appeals.

§ 32-1308.02. Interpretation of fees.

No inference shall be drawn, or precedent established, based on the provisions in § 32-1308 or § 32-1308.01 that provide that attorney fees shall be calculated pursuant to the matrix approved in Salazar v. District of Columbia, 123 F.Supp.2d 8 (D.D.C. 2000) that such fees are reasonable for any law other than this chapter, the Minimum Wage Revision Act, the Sick and Safe Leave Act, or the Living Wage Act.

§ 32-1309. Mayor may delegate functions.

The Mayor is authorized to delegate to any agency of the government of the District of Columbia any function, power, or duty vested in or imposed upon him by this chapter.

§ 32-1310. Severability.

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 32-1311. Retaliation.

(a) It shall be unlawful for any employer to discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee or person because that employee or person has:

(1) Made or is believed to have made a complaint to his or her employer, the Mayor, the Attorney General for the District of Columbia, any federal or District employee, or to any other person that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this chapter or the Living Wage Act, or any regulation promulgated pursuant to this chapter or the Living Wage Act;

(2) Initiated or is about to initiate a proceeding under or related to this chapter;

(3) Provided information to the Mayor, the Attorney General for the District of Columbia, or any other person regarding a violation, investigation, or proceeding under this chapter;

(4) Testified or is about to testify in an investigation or proceeding under this chapter; or

(5) Otherwise exercised rights protected under this chapter.

(b) An employee complaint or other communication need not make explicit reference to any section or provision of this chapter or the Living Wage Act to trigger the protections of this section. The employer, or any person acting on behalf of the employer, taking adverse action against an employee within 90 days of an employee or other person's engagement in the activities set forth in subsection (a) of this section shall raise a presumption that such action is retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.

(c) An employee may bring a civil action in a court of competent jurisdiction against any employer or other person alleged to have violated the provisions of this section. The court shall have jurisdiction to restrain violations of this section regardless of an employee's dates of employment

and to order all appropriate relief, including:

(1) Assessing a civil penalty against the employer or other person of not less $1,000 nor more than $10,000;

(2) Enjoining the conduct;

(3) Awarding liquidated damages of an amount equal to the civil penalty to the employee;

(4) Awarding front pay, lost compensation, costs, and reasonable attorney's fees to the employee;

(5) Reinstatement of an employee to his or her former position or an equivalent position with restoration of seniority; and

(6) Other forms of equitable relief.

(d) An employee may file an administrative complaint against any employer or other person alleged to have violated the provisions of this section and receive a hearing by an administrative law judge by following the same procedure as for any other violation of this chapter. If an administrative law judge finds that an employer or other person has engaged in retaliation, the administrative law judge shall, by an order which shall describe with particularity the nature of the violation, assess a civil penalty against the employer or other person of not less than $1,000 nor more than $10,000. The administrative law judge shall also order all appropriate relief including:

(1) Enjoining the conduct;

(2) Awarding liquidated damages of an amount equal to the civil penalty to the employee;

(3) Awarding front pay, lost compensation, costs, and reasonable attorneys' fees to the employee;

(4) Reinstatement of an employee to his or her former position or an equivalent position with restoration of seniority; and

(5) Other forms of equitable relief.

(e) No administrative penalty may be collected unless the Mayor has provided the person alleged to have violated any of the provisions of this section with notification of the violation, notification of the amount of the penalty to be imposed, and notification of the opportunity to request a formal hearing held pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.] and § 32-1308.01. If a formal hearing is requested, it shall be held within 30 days of the date of the request and the Mayor shall issue a final order within 30 days after the hearing. The order shall contain a finding that a violation has or has not occurred and the amount of damages, costs, interest, or penalties owed. If the person receiving the violation does not request a hearing, the person shall transmit to the Mayor the amount of the penalty within 15 days of receipt of notification of the violation.

(f) The court or administrative law judge in any action brought under this section shall, in addition to any judgment or administrative order awarded to the prevailing plaintiff or plaintiffs, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees as calculated under § 32-1308(b) or § 32-1308.01(m), as applicable, to be paid by the defendant.

§ 32-1312. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this chapter.

District of Columbia Minimum Wage Act

"DCMWA"

D.C. Code §§ 32-1001 – 32-1015

§ 32-1001. Findings and declaration of policy.

(a) The Council of the District of Columbia finds that persons employed in the District of Columbia should be paid at wages sufficient to provide adequate maintenance and to protect health. Any wage that is not sufficient to provide adequate maintenance and to protect health impairs the health, efficiency, and well-being of persons so employed, constitutes unfair competition against other employers and their employees, threatens the stability of industry, reduces the purchasing power of employees, and requires, in many instances, that their wages be supplemented by the payment of public moneys for relief or other public and private assistance. Employment of persons at these insufficient rates of pay threatens the health and well-being of the people of the District of Columbia and injures the overall economy.

(b) It is declared the policy of this subchapter to ensure the elimination of the conditions referred to above.

§ 32-1002. Definitions.

For the purposes of this subchapter:

(1) The term "Director" means the Director of the Department of Employment Services.

(1A) The term "employ" includes to suffer or permit to work.

(2) The term "employee" includes any individual employed by an employer, except that this term shall not include:

(A) Any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization;

(B) Any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions; or

(C) Any individual employed as a casual babysitter, in or about the residence of the employer.

(3) The term "employer" includes the District of Columbia government, any individual, partnership, general contractor, subcontractor, association, corporation, business trust, or any person or group

of persons acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States government.

(4) The term "gratuities" or "tips" means voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered.

(4A) The term "manager" means the person who oversees the employees in a food or beverage establishment, such as the servers, bussers, bartenders, back waiters, hosts, and hostesses, and the general operation of the establishment.

(5) The term "Mayor" means the Mayor of the District of Columbia or the Mayor's designated agent or representative, including the Department of Employment Services.

(6) The term "occupation" means any occupation, service, trade, business, industry, or branch or group of occupations or industries, or employment or class of employment, in which employees are gainfully employed.

(6A) The term "office building" means any commercial property where the primary functions are the transaction of administrative, business, civic, or professional services, including properties where handling goods, wares, or merchandise, in limited quantities, is accessory to the primary occupancy or use. The term "office building" does not include libraries, museums, or universities.

(7) The term "regular rate" means all remuneration for employment paid to, or on behalf of, the employee, but shall not be considered to include the items set forth in the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 207(e)(1), (2), (3), (4), (5), (6), and (7). Extra compensation paid as described in § 207(e)(5), (6), and (7) shall be creditable toward overtime compensation.

(7A) The term "security officer" shall have the same meaning as provided in section 2100 of Title 17 of the District of Columbia Municipal Regulations.

(7B) The term "server" means an employee in a food or beverage establishment who takes orders, serves food or drinks, or both.

(7C) The term "tip-declaration form" means a printed form provided by an employer to an employee that shows the total tips received, including the amount of the tip outs or share of a tip pool that an individual employee provided to another employee or the amount of the tip outs or share of a tip pool that the employee received from another employee, and the calculation by which the amount was determined, such as total tips received and hours worked.

(7D) The term "tip out" means the amount or percentage of servers', bartenders', or other directly tipped employees' tips that an employee shares, due to a tip-sharing policy or tip-pooling agreement, with other employees such as bussers, bartenders, back waiters, hosts, and hostesses.

(7E) The term "tip pool" means the combining of tips from multiple employees into a single amount for the purpose of sharing tips among employees.

(7F) The term "tip-pool structure" means the calculation of the portion of a tip pool an employee will provide to or receive from the pool, as a percentage of total gratuities, sales, or other factor.

(7G) The term "tip-sharing policy" means the written calculation of any tip outs or tip-pool structures that employees, delineated by job position or other factor, will provide to or receive from other employees.

(8) The term "wage" means compensation due to an employee by reason of the employee's employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, including allowances as may be permitted by any regulation issued under §§ 32-1003 and 32-1006.

(9) The term "Washington metropolitan region" means the area consisting of the District of Columbia, Montgomery, and Prince George's Counties in Maryland, Arlington and Fairfax Counties and the Cities of Alexandria, Fairfax and Falls Church in Virginia.

(10) The term "working time" means all the time the employee:

(A) Is required to be on the employer's premises, on duty, or at a prescribed place;

(B) Is permitted to work;

(C) Is required to travel in connection with the business of the employer; or

(D) Waits on the employer's premises for work.

Interpretations of what constitutes working time shall be made in accordance with Title 29 of the Code of Federal Regulations, Part 785, Hours Worked Under the Fair Labor Standards Act of 1938, as amended, except that references to interpretations of the Portal-to-Portal Act shall have no force and effect.

§ 32-1003. Requirements.

(a)

(1) Except as provided in subsection (h) of this section, as of January 1,

2005, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $6.60 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act (29 U.S.C. § 206 et seq.) ("Fair Labor Standards Act"), plus $1, whichever is greater.

(2) Except as provided in subsection (h) of this section, as of January 1, 2006, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $7 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act, plus $1, whichever is greater.

(3) Except as provided in subsection (h) of this section, as of July 1, 2014, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $9.50 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act, plus $1, whichever is greater.

(4) Except as provided in subsection (h) of this section, as of July 1, 2015, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be $10.50 an hour, or the minimum wage set by the United States government pursuant to the Fair Labor Standards Act, plus $1, whichever is greater.

(5)

(A) Except as provided in subsection (h) of this section and subparagraph (B) of this paragraph, the minimum hourly wage required to be paid to an employee by an employer shall be as of:

(i) July 1, 2016: $11.50;

(ii) July 1, 2017: $12.50;

(iii) July 1, 2018: $13.25;

(iv) July 1, 2019: $14.00; and

(v) July 1, 2020: $15.00.

(B) If the minimum wage set by the United States government pursuant to the Fair Labor Standards Act ("U.S. minimum wage") is greater than the minimum hourly wage currently being paid pursuant to subparagraph (A) of this paragraph, the minimum hourly wage paid to an employee by an employer shall be the U.S. minimum wage plus $1.

(6)

(A) Except as provided in subsection (h) of this section, beginning on July 1, 2021, and no later than July 1 of each successive year, the minimum wage provided in this subsection

shall be increased in proportion to the annual average increase, if any, in the Consumer Price Index for All Urban Consumers in the Washington Metropolitan Statistical Area published by the Bureau of Labor Statistics of the United States Department of Labor for the previous calendar year. Any increase under this paragraph shall be adjusted to the nearest multiple of $.05.

(B) Repealed.

(b) A person shall be employed in the District of Columbia when:

(1) The person regularly spends more than 50% of their working time in the District of Columbia; or

(2) The person's employment is based in the District of Columbia and the person regularly spends a substantial amount of their working time in the District of Columbia and not more than 50% of their working time in any particular state.

(c) No employer shall employ any employee for a workweek that is longer than 40 hours, unless the employee receives compensation for employment in excess of 40 hours at a rate not less than 1 1/2 times the regular rate at which the employee is employed.

(d) All workers with disabilities shall be paid at a rate not less than the minimum wage, except in those instances where a certificate has been issued by the United States Department of Labor that authorizes the payment of less to workers with disabilities under § 214(c) of the Fair Labor Standards Act [29 U.S.C. § 214(c)].

(e) No employer shall be deemed to have violated subsection (c) of this section if the employee works for a retail or service establishment and:

(1) The regular rate of pay of the employee is in excess of $1^1/_2$ times the minimum hourly rate applicable to the employee under this subchapter; and

(2) More than 1/2 of the employee's compensation for a representative period (not less than 1 month) represents commissions on goods or services.

(f)

(1) The minimum hourly wage required to be paid by an employer to an employee who receives gratuities ("tipped minimum wage"), provided that the employee actually receives gratuities in an amount at least equal to the difference between the hourly wage paid and the minimum hourly wage as set by subsection (a) of this section, shall be as of:

(A) January 1, 2005: $2.77;

(B) July 1, 2017: $3.33;

(C) July 1, 2018: $3.89:

(D) July 1, 2019: $ 4.45; and

(E) July 1, 2020: $ 5.00.

(2) Beginning on July 1, 2021, and no later than July 1 of each successive year, the tipped minimum wage shall be increased in proportion to the annual average increase, if any, in the Consumer Price Index for All Urban Consumers in the Washington Metropolitan Statistical Area published by the Bureau of Labor Statistics of the United States Department of Labor for the previous calendar year. Any increase under this paragraph shall be adjusted to the nearest multiple of $.05.

(f-1) The Mayor shall publish in the District of Columbia Register, on the Department of Employment Services website, and make available to employers in a bulletin, the adjusted minimum hourly wage to be paid by an employer to an employee pursuant to subsections (a)(5) and (6) and (f) of this section at least 30 days before an increase is scheduled to go into effect.

(g) Subsection (f) of this section shall not apply to an employee who receives gratuities, unless:

(1) The employer has provided the employee with notice of the following, included in the notice furnished pursuant to § 32-1008(c):

(A) The provisions of subsection (f) of this section;

(B) If tips are not shared, that the tipped employee shall retain all tips received;

(C) If tips are shared, the employer's tip-sharing policy; and

(D) The percentage by which tips paid via credit card will be reduced by credit card fees;

(2) If the employer uses tip sharing, the employer has posted the tip-sharing policy; and

(3) All gratuities received by the employee have been retained by the employee, except that this provision shall not be construed to prohibit the sharing of gratuities among employees who customarily receive gratuities.

(h) Beginning on July 1, 2019, and no later than July 1 of each successive year, an employer shall pay a security officer working in an office building in the District of Columbia wages, or any combination of wages and benefits, that are not less than the combined amount of the minimum wage and fringe benefit rate in effect on September 1 of the

immediately preceding year for the guard 1 classification established by the United States Secretary of Labor pursuant to Chapter 67 of Title 41 of the United States Code (41 U.S.C. § 6701 et seq.), as amended.

§ 32-1004. Exceptions.

(a) The minimum wage and overtime provisions of § 32-1003 shall not apply with respect to:

(1) Any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as these terms are defined by the Secretary of Labor under 201 et seq. of the Fair Labor Standards Act); or

(2) Any employee engaged in the delivery of newspapers to the home of the consumer.

(b) The overtime provisions of § 32-1003(c) shall not apply with respect to:

(1) Any employee employed as a seaman;

(2) Any employee employed by a railroad;

(3) Any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, or trucks, if employed by a non-manufacturing establishment primarily engaged in the business of selling these vehicles to ultimate purchasers; or

(4) Repealed.

(5) Repealed.

(6) Any employee employed by a carrier by air who voluntarily exchanges workdays with another employee for the primary purpose of utilizing air travel benefits available to these employees.

§ 32-1005. Authority of Mayor.

(a) The Mayor or his authorized representative shall have the authority to:

(1) Investigate and ascertain the wages of persons employed in any occupation in the District of Columbia;

(2) Enter and inspect the place of business or employment of any employer in the District of Columbia in order to:

(A) Examine and inspect any books, registers, payrolls, and other records as the Mayor or the Mayor's authorized representative may deem necessary or appropriate;

(B) Copy books, registers, payrolls, and other records as the Mayor or the Mayor's authorized representative may deem necessary or appropriate; and

(C) Question an employee for the purpose of ascertaining whether the provisions of this subchapter and the orders and regulations issued thereunder have been and are being complied with; and

(3) Require from any employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, and any other information that pertains to the employment of the employees as the Mayor or the Mayor's authorized representative may deem necessary or appropriate to carry out the purposes of this subchapter.

(b) The Mayor shall encourage reporting pursuant to this subchapter by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or other person reporting a violation during the course of any investigation; provided, that with the authorization of such person, the Mayor may disclose his or her name and identifying information as necessary to conduct a hearing and enforce this subchapter or other employee protection laws.

§ 32-1006. Regulatory powers of Mayor.

(a) The Mayor shall make and revise regulations, including definitions of terms, as deemed appropriate to carry out the purposes of this subchapter or necessary to prevent its circumvention or evasion and to safeguard the minimum wage rates and the overtime provisions established by this subchapter.

(b) The Mayor shall make regulations in order to:

(1) Provide reasonable allowances for board, lodging, or services customarily furnished by employers to employees; and

(2) Provide allowances for other special conditions or circumstance that may be usual in a particular employer-employee relationship.

(c) The Mayor may make regulations in order to:

(1) Define and govern the employment of workers under 18 years of age and provide minimum wages for these workers at a rate lower than that specified in § 32-1003;

(2) Govern piece rates, bonuses, and commissions in relation to time rates;

(3) Govern part-time rates;

(4) Govern minimum daily wages;

(5) Relate to wage provisions governing split shifts and excessive spread of hours; and

(6) Govern uniforms, tools, travel, and other items of expense incurred by employees as a condition of employment.

(d) The Council of the District of Columbia shall review and make recommendations, as needed, to the Mayor or the Mayor's authorized representative, to ensure that the minimum wage set by the federal government, plus $1, is fair and adequate for employees in the District of Columbia.

§ 32-1007. Investigatory powers of Mayor.

(a) The Mayor and the Attorney General shall each have the power to administer oaths and require by subpoena the attendance and testimony of witnesses, the production of all books, registers, and other evidence relative to any matters under investigation, at any public hearing, or at any meeting of any committee or for the use of the Mayor or the Attorney General in securing compliance with this subchapter.

(b) In case of disobedience to a subpoena, the Mayor or the Attorney General may invoke the aid of the Superior Court of the District of Columbia to require the attendance and testimony of witnesses and the production of documentary evidence.

(c) In case of contumacy or refusal to obey a subpoena, the Court may issue an order to require an appearance before the Mayor or the Attorney General, the production of documentary evidence, and the giving of evidence.

(d) A person or an entity to whom a subpoena has been issued may move to quash or modify the subpoena.

(e) Any failure to obey the order of the Court may be punished by the Court as contempt.

§ 32-1007.01. Reporting.

The Mayor shall submit biannually a report to the Council regarding any audits or inspections conducted related to compliance with this subchapter or any regulation issued pursuant to this subchapter. Each report shall include:

(1) The number of employers inspected for compliance due to complaints received, categorized by size of the employer based on the number of employees;

(2) The number of employers inspected for compliance as a result of a random audit, categorized by size of the employer based on the number of employees;

(3) The number of violations, by type of violation; and

(4) An explication of the actions the Mayor took pursuant to § 32-1011

against each employer charged with violating this subchapter or any regulation issued pursuant to this subchapter, including a list of fines assessed against the employer.

§ 32-1008. Duties of employers; open records.

(a)

(1) Every employer subject to any provision of this subchapter or of any regulation or order issued under this subchapter shall make, keep, and preserve for a period of not less than 3 years or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this chapter, whichever is greater, a record of:

(A) The name, address, and occupation of each employee;

(B) A record of the date of birth of any employee under 19 years of age;

(C) The rate of pay and the amount paid each pay period to each employee;

(D) The precise times worked each day and each workweek by each employee, except for employees who are not paid on an hourly basis and who are exempt from the minimum wage and overtime requirements under § 32-1004(a); and

(E) Any other records or information as the Mayor shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this subchapter or of the regulations issued under this subchapter.

(2)

(A) Any records shall be open and made available for inspection or transcription by the Mayor, the Mayor's authorized representative, or the Office of the Attorney General upon demand at any reasonable time. An employer shall furnish to the Mayor, the Mayor's authorized representative, or the Office of the Attorney General on demand a sworn statement of records and information upon forms prescribed or approved by the Mayor or Attorney General.

(B) No employer may be found to be in violation of subparagraph (A) of this paragraph unless the employer had an opportunity to challenge the Mayor or Attorney General's demand before a judge, including an administrative law judge.

(a-1) Beginning January 1, 2020, an employer that employs an employee who is paid in accordance with § 32-1003(f), except for a hotel employer,

shall use a third-party payroll business to prepare the payroll for the employer.

(b) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the following:

(1) Date of the wage payment;

(2) Gross wages paid;

(3) Deductions from and additions to wages, including a separate line for gratuities;

(4) Net wages paid;

(5) Hours worked during the pay period;

(6) Employee's tip-declaration form for the pay period, delineating cash tips and credit-card tips; and

(7) Any other information as the Mayor may prescribe by regulation.

(c) Every employer, except as specified in § 32-1008.01, shall furnish to each employee at the time of hiring, and whenever any of the information contained in the written notice changes, a written notice in English; provided, that if the Mayor has made a sample template available in a language other than English that the employer knows to be the employee's primary language or that the employee requests, the employer shall furnish the written notice to the employee in that other language also. The notice required by this subsection shall contain:

(1) The name of the employer and any "doing business as" names used by the employer;

(2) The physical address of the employer's main office or principal place of business, and a mailing address, if different;

(3) The telephone number of the employer;

(4) The employee's rate of pay and the basis of that rate, including: by the hour, shift, day, week, salary, piece, commission, any allowances claimed as part of the minimum wage, including tip, meal, or lodging allowances, or overtime rate of pay, exemptions from overtime pay, living wage, exemptions from the living wage, and the applicable prevailing wages;

(4A) The employer's tip-sharing policy, consistent with the requirements of § 32-1003(g)(1)(B) through (D);

(5) The employee's regular payday designated by the employer in accordance with § 32-1302; and

(6) Any such other information as the Mayor considers material and necessary.

(d)

(1)

(A) Within 90 days after February 26, 2015, and within 30 days of any change to the information contained in the prior written notice, an employer, except in those instances where notice is provided pursuant to § 32-1008.01, shall furnish each employee with an updated notice containing the information required under subsection (c) of this section in English and in any additional language required by subsection (c) of this section.

(B) To show proof of compliance with these notice requirements, an employer shall retain either copies of the written notice furnished to employees that are signed and dated by the employer and by the employee acknowledging receipt or electronic records demonstrating that the employee received and acknowledged the notice via email or other electronic means.

(C) Notwithstanding subparagraph (A) of this paragraph, if an employer revises its tip-out policy, the employer shall provide employees with the proposed new policy before its implementation by the employer.

(2) If an employer fails to comply with this subsection or subsection (c) of this section, the failure shall constitute evidence weighing against the credibility of the employer's testimony regarding the rate of pay promised.

(3) The period prescribed in § 32-1308(c) shall not begin until the employee is provided all itemized statements and written notice required by this section.

(e) The Mayor shall make available for employers a sample template of the notice within 60 days of February 26, 2015. On or before February 26, 2017, the Mayor also shall publish online a translation of the sample template in any languages required for vital documents pursuant to § 2-1933. The Mayor shall also publish online translations of the sample template in any additional languages the Mayor considers appropriate to carry out the purposes of this section.

§ 32-1008.01. Notice requirements for temporary staffing firms.

(a)

(1) A temporary staffing firm shall furnish to each employee at the time of the initial interview or hire a notice that is signed and dated by the temporary staffing firm and the employee containing the information required by § 32-1008(c). The notice shall be provided in English and, if the Mayor has made available a translation of the sample template in a language that is known by the

temporary staffing firm to be the employee's primary language or that the employee requests, the temporary staffing firm shall furnish written notice to the employee in that other language also.

(2) For the purposes of the notice:

(A) If a specific rate of pay has not been determined at the time of the initial interview or hire, a temporary staffing firm shall provide the employee with a range of potential wages the employee will likely earn based upon the qualifications of the employee and the suitability of the assignment;

(B) The range of potential hourly wages may not be excessively broad and must be based on a good-faith estimate of the typical wage earned by similarly qualified employees working at assignments similar to those for which the employee is eligible and likely to be assigned; and

(C) If a fixed, designated payday has not been established at the time of the initial interview or hire, a temporary staffing firm shall inform the employee that the payday may vary depending upon the usual practice at the assignment.

(b) When a temporary staffing firm assigns an employee to perform work at, or provide services for, a client, the temporary staffing firm shall furnish the employee a written notice in English, and in another language that the employer knows to be the employee's primary language or that the employee requests, if a sample template has been made available pursuant to subsection (c) of this section, of:

(1) The specific designated payday for the particular assignment;

(2) The actual rate of pay for the assignment and the benefits, if any, to be provided;

(3) The overtime rate of pay the employee will receive, or, if applicable, inform the employee that the position is exempt from additional overtime compensation and the basis for the overtime exemption;

(4) The location and name of the client employer and the temporary staffing firm;

(5) The anticipated length of the assignment;

(6) Whether training or safety equipment is required and who is obligated to provide and pay for the equipment;

(7) The legal entity responsible for workers' compensation, should the employee be injured on the job; and

(8) Information about how to contact the designated enforcement agency for concerns about safety, wage and hour, or discrimination.

(c) On or before February 26, 2017, the Mayor shall publish online a translation of the sample template of the notice required by this section in any language required for vital documents pursuant to § 2-1933. The Mayor shall also publish online translations of the sample template in any additional languages the Mayor considers appropriate to carry out the purposes of this section.

(d) For the purposes of this section:

(1) The term "temporary staffing firm" means a business that recruits and hires its own employees and assigns those employees to perform work at or services for another organization, to support or supplement the other organization's workforce, or to provide assistance in special work situations such as employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects.

(2) Electronic mail, text messaging, facsimile, and regular mail shall each constitute written notice.

§ 32-1009. Posting of act and regulations on premises; distribution of copies to employers.

(a) Every employer who is subject to any provision of this subchapter or any regulation issued under this subchapter shall keep a copy or summary of this subchapter and any applicable regulation issued under this subchapter, in a form prescribed or approved by the Mayor, posted in a conspicuous and accessible place in or about the premises at which any employee covered by the regulation is employed. If an employer fails to comply with this requirement, the period prescribed in § 32-1308(c) shall not begin until the employer posts or provides the required notice.

(b) Employers shall be furnished copies or summaries of this subchapter by the Mayor without charge, in accordance with subchapter II of Chapter 19 of Title 2 [§ 2-1931 et seq.].

(c) Employers shall be furnished with copies or summaries of this subchapter within 60 days of February 26, 2015. An employer shall not be liable for failure to post notice if the Mayor has failed to provide to the employer the notice required by this section.

§ 32-1009.01. Notice requirements for tipped wages.

(a)

(1)

(A) As of January 1, 2020, the third-party payroll business, required pursuant to § 32-1008(a-1) to process payroll for an employer that employs an employee who is paid in

accordance with § 32-1003(f), shall submit a quarterly report to the Mayor no later than 30 days after the end of each quarter certifying that each employee was paid at least the required minimum wage, including gratuities.

(B) Before January 1, 2020, an employer that employs an employee who is paid in accordance with § 32-1003(f) shall submit a quarterly report to the Mayor no later than 30 days after the end of each quarter certifying that each employee was paid at least the required minimum wage, including gratuities.

(C) A hotel employer that employs an employee who is paid in accordance with § 32-1003(f) shall submit a quarterly report to the Mayor no later than 30 days after the end of each quarter certifying that each employee was paid at least the required minimum wage, including gratuities.

(2) Each quarterly report submitted pursuant to this subsection shall include and itemize the following information:

(A) Name of each employee;

(B) Number of hours each employee worked each week during the quarter for which the report is being provided;

(C) The total pay, including gratuities, received by each employee each week during the quarter for which the report is being provided;

(D) Average weekly wage for each employee during the quarter for which the report is being provided; and

(E) The employer's current tip-out policy that the employer supplied to the third-party payroll business for calculation of wages during the quarter.

(b)

(1) The Mayor shall create an Internet-based portal for online reporting of the quarterly wage reports required by subsection (a) of this section.

(2) An employer shall submit its quarterly wage reports online unless the employer claims that online reporting creates a hardship, in which case the employer shall submit its reports in hard-copy form.

(3) The Mayor shall provide reporting requirements training to educate employers about the reporting requirements and use of the Internet-based portal.

(c) Repealed.

§ 32-1009.02. Tipped Workers Coordinating Council. [Not funded].

(a) There is established the Tipped Workers Coordinating Council ("Coordinating Council").

(b) The Coordinating Council shall be a partnership of tipped workers, employers, and public agencies that promotes a high-quality response to tipped-worker cases of wage theft and unfair labor practices.

(c) Members of the Coordinating Council shall consist of the following persons:

(1) The Director of the Department of Employment Services, or his or her designee;

(2) The Director of the Office of Nightlife and Culture, or his or her designee;

(3) The Director of the Department of Consumer and Regulatory Affairs, or his or her designee;

(4) The Director of the Office of Human Rights, or his or her designee;

(5) A representative from the Restaurant Association of Metropolitan Washington;

(6) A representative from the Hotel Association of Washington, D.C.;

(7) Two representatives, appointed by the Mayor, from District-based organizations that engage in policy or advocacy for tipped workers; and

(8) Three representatives, appointed by the Chairman of the Council as follows:

(A) Two representatives from District-based organizations that engage in policy or advocacy for tipped workers; and

(B) One representative shall be an employer that employs an employee who is paid in accordance with § 32-1003(f), but is not part of the restaurant or hotel industry.

(d) The term of office for each representative provided for in subsection (c)(5), (6), (7), and (8) of this section shall be for 3 years; provided, that the initial term of:

(1) One of the representatives appointed by the Mayor from a District-based organization that engages in policy or advocacy for tipped workers and one of the representatives appointed by the Chairman of the Council from a District-based organization that engages in policy or advocacy for tipped workers shall be for 2 years; and

(2) One of the representatives appointed by the Mayor from a District-based organization that engages in policy or advocacy for

tipped workers and one of the representatives appointed by the Chairman of the Council from a District-based organization that engages in policy or advocacy for tipped workers shall be for one year.

(e) A representative who is appointed to fill a vacancy that occurs before the expiration of a representative's full term shall serve only the unexpired portion of the term.

(f)

(1) The Coordinating Council shall hold its initial meeting no later than 90 days after the date this section becomes applicable [for applicability date, see D.C. Law 22-196, § 8].

(2) At the initial meeting, one non-governmental member of the Coordinating Council shall be elected as chairperson by a majority of the Coordinating Council members.

(g) The Coordinating Council shall establish its own procedures and requirements with respect to the place at which and the manner in which it will conduct its meetings.

(h) The Coordinating Council shall:

(1) Improve coordination and functioning of the wage policies for tipped workers, investigations into wage theft involving tipped workers, and reporting mechanisms for tipped workers;

(2) Conduct regular and anonymous case reviews of all parties involved in claims of wage violations for tipped workers; and

(3) Develop a protocol to ensure that feedback and recommendations from case reviews are incorporated into the Department of Employment Services's policies, procedures, practices, training, and decisions to re-examine investigations, when applicable.

§ 32-1010. Violations.

(a) It shall be unlawful for any employer to:

(1) Violate any of the provisions of this subchapter or any of the provisions of any regulation issued under this subchapter;

(2) Violate any of the provisions of §§ 32-1008, 32-1009 and 32-1009.01 or any regulation made under the provisions of § 32-1006, or to make any statement, report, or record filed or kept pursuant to the provisions of §§ 32-1008 and 32-1009.01 or any regulation or order issued under § 32-1006 knowing the statement, report, or record to be false in a material respect;

(3) Discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee or person because that employee or person has:

(A) Made or is believed to have made a complaint to his or her employer, the Mayor, the Attorney General for the District of Columbia, any federal or District employee, or to any other person that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this subchapter, or any regulation promulgated pursuant to this subchapter;

(B) Caused to be instituted or is about to institute a proceeding under or related to this subchapter;

(C) Provided information to the Mayor, or the Attorney General for the District of Columbia, or any federal or District of Columbia employee;

(D) Testified or is about to testify in an investigation or any proceeding filed under this subchapter; or

(E) Exercised rights protected under this subchapter.

(4) Hinder or delay the Mayor or the Mayor's authorized representative in the enforcement of this subchapter, to refuse to admit the Mayor or the Mayor's authorized representative to any place of employment upon demand, to refuse to make available any record to the Mayor or Mayor's authorized agent required to be made, kept, or preserved under this subchapter, or to fail to post a summary or copy of this subchapter or of any applicable regulation or order, as required under § 32-1009.

(b) An employee complaint or other communication need not make explicit reference to any section or provision of this subchapter to trigger the protections of this section. The employer, or any person acting on behalf of the employer, taking adverse action against an employee within 90 days of an employee or other person's engagement in the activities set forth in subsection (a) of this section shall raise a presumption that the action is retaliation. The presumption may be rebutted by clear and convincing evidence that the action was taken for other permissible reasons.

§ 32-1011. Penalties; prosecution.

(a) Any person who willfully or negligently violates any of the provisions of § 32-1010 shall, upon conviction, be subject to a fine of not more than $10,000, or to imprisonment of not more than 6 months, or both.

(b) No person shall be imprisoned under this section except for an offense committed willfully or after the conviction of that person for a prior offense under this section.

(c) Prosecutions for violations of this subchapter shall be in the Superior Court of the District of Columbia and shall be conducted by the

Attorney General for the District of Columbia.

(d)

(1) In addition to and apart from the penalties or remedies provided for in this section or § 32-1012, the Mayor shall assess and collect administrative penalties as follows:

(A) For the first violation of § 32-1003, $50 for each employee or person whose rights under this subchapter are violated for each day that the violation occurred or continued;

(B) For any subsequent violation of § 32-1003, $100 for each employee or person whose rights under this subchapter are violated for each day that the violation occurred or continued;

(C) $500 for each failure to maintain payroll records or to retain payroll records for 3 years or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this subchapter, whichever is greater, for each violation as required by § 32-1008(a)(1);

(D) $500 for each failure to allow the Mayor to inspect payroll records or perform any other investigation pursuant to § 32-1008(a)(2) or § 32-1010(a)(4);

(E) $500 for each failure to provide each employee an itemized wage statement or the written notice as required by § 32-1008(b) and (c); and

(F) $100 for each day that the employer fails to post notice as required under § 32-1009(a).

(2) The Mayor may assess more than one administrative penalty against an employer for the same adversely affected employee if the employer has violated more than one statutory provision of this subchapter, subchapter X-A of Chapter 2 of Title 2 [§ 2-220.01 et seq.], or subchapter III of Chapter 5 of this title [§ 32-531.01 et seq.].

(e) Repealed.

(f) The fine set forth in this section shall not be limited by § 22-3571.01.

(g) The administrative fines and penalties collected under this section shall be deposited into the Wage Theft Prevention Fund, established by § 32-1308.01.

§ 32-1011.01. Remedies.

If an employer or other person is found to have violated § 32-1010(a)(3), the court or administrative law judge shall, by an order which shall describe with particularity the nature of the violation, award to the employee all appropriate relief provided for under § 32-1311.

§ 32-1012. Civil actions.

(a) A civil action may be commenced according to, and with all the remedies provided under, § 32-1308

(b)

(1) Except as provided in paragraph (2) of this subsection, any employer who pays any employee less than the wage to which that employee is entitled under this subchapter shall be liable to that employee in the amount of the unpaid wages, statutory penalties, and an additional amount as liquidated damages equal to treble the amount of unpaid wages.

(2) The court may award an additional amount of liquidated damages less than treble the amount of unpaid wages, but not less than the amount of unpaid wages, only if the employer demonstrates to the satisfaction of the court that:

(A) The act or omission that gave rise to the action was in good faith;

(B) That the employer had reasonable grounds for the belief that the act or omission was not in violation of this subchapter; and

(C) That the employer promptly paid the full amount of wages claimed to be owed to the employee.

(c) A subcontractor, including any intermediate subcontractor, and the general contractor shall be jointly and severally liable to the subcontractor's employees for the subcontractor's violations of this subchapter. Except as otherwise provided in a contract between the subcontractor and the general contractor, the subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties, or attorneys' fees owed as a result of the subcontractor's violations of this subchapter, unless those violations were due to the lack of prompt payment in accordance with the terms of the contract between the general contractor and the subcontractor.

(d) Any agreement between an employer and employee in which the employee agrees to work for less than the wages to which the employee is entitled under this subchapter or any regulation issued under this subchapter shall be no defense to any action to recover unpaid wages or liquidated damages.

(e) The Mayor is authorized to supervise the payment of unpaid wages and liquidated damages owed to any employee under this subchapter or any regulation issued under this subchapter, and the agreement of any employee to accept this payment, shall upon full payment, constitute a waiver by the employee of any right the employee may have

under subsection (a) of this section to any unpaid wages, and an additional amount as liquidated damages.

(f)

(1) When a temporary staffing firm employs an employee who performs work on behalf of or to the benefit of a client pursuant to a temporary staffing arrangement or contract for services, both the temporary staffing firm and the client shall be jointly and severally liable for violations of this subchapter to the employee and to the District.

(2) The District, the employee, or the employee's representative shall notify the temporary staffing firm of the alleged violations at least 30 days before filing a claim for a violation against a client who was not the employee's direct employer.

(3) Except as otherwise provided in a contract between the temporary staffing firm and its client, the temporary staffing firm shall indemnify its client for any wages, damages, interest, penalties, or attorney's fees owed as a result of the temporary staffing firm's violations of this subchapter.

§ 32-1012.01. Administrative actions.

Administrative complaints filed for violations of this subchapter shall be considered under the same procedures and with all the same legal and equitable remedies available for violations of subchapter I of Chapter 13 of this title [§ 32-1301 et seq.].

§ 32-1013. Limitations. [Repealed].

Repealed.

§ 32-1014. Collective bargaining.

Nothing in this subchapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the standards applicable under the provisions of this subchapter.

§ 32-1015. Application to revised wage orders.

Section 32-1004(a) shall not apply to any revised wage order issued by the Wage-Hour Board that sets a minimum wage that is higher than the minimum wage set by this subchapter.

District of Columbia Accrued Safe and Sick Leave Act

"DCASSLA"

D.C. Code §§ 32-531.01 – 32-531.17

§ 32-531.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Domestic violence" means an intrafamily offense as defined in § 16-1001(5) [now (8)].

(2) "Employee" means any individual employed by an employer, but shall not include:

(A) Any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization;

(B) Any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions;

(C) Any individual employed as a casual babysitter, in or about the residence of the employer.

(D) An independent contractor;

(E) A student;

(F) Health care workers who choose to participate in a premium pay program; or

(G) A substitute teacher or a substitute aide who is employed by District of Columbia Public Schools for a period of 30 or fewer consecutive work days.

(3)

(A) "Employer" means a legal entity (including a for-profit or nonprofit firm, partnership, proprietorship, sole proprietorship, limited liability company, association, or corporation), or any receiver or trustee of an entity (including the legal representative of a deceased individual or receiver or trustee of an individual), who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee.

(B) The term "employer" shall include the District government.

(4) "Family member" means:

(A)

(i) A spouse, including the person identified by an employee as his or her domestic partner, as defined in § 32-701(3);

(ii) The parents of a spouse;

(iii) Children (including foster children and grandchildren);

(iv) The spouses of children;

(v) Parents;

(vi) Brothers and sisters; and

(vii) The spouses of brothers and sisters.

(B) A child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility; or

(C) A person with whom the employee shares or has shared, for not less than the preceding 12 months, a mutual residence and with whom the employee maintains a committed relationship, as defined in § 32-701(1).

(5) "Paid leave" means accrued increments of compensated leave provided by an employer for use by an employee during an absence from employment for any of the reasons specified in § 32-531.02(b).

(6) "Premium pay program" means a plan offered by an employer pursuant to which an employee may elect to receive extra pay in lieu of benefits.

(7) "Sexual abuse" means any offense described in Chapter 30 of Title 22 [§ 22-3001 *et seq.*]

(8) "Student" means an employee who:

(A)

(i) Is a full-time student, as defined by an accredited institution of higher education;

(ii) Is employed by the institution at which the student is enrolled;

(iii) Is employed for less than 25 hours per week; and

(iv) Does not replace an employee subject to this subchapter; or

(B) Is employed as part of the Year Round Program for Youth, as established by the Department of Employment Services.

(9) "Substitute aide" means an individual who is employed by District of Columbia Public Schools to provide instructional assistance (general, specialized, or concentrated) to students on a temporary basis when the regular instructional aide is unavailable. The term "substitute aide" does not include an individual employed by District of Columbia Public Schools on a term or full-time assignment.

(10) "Substitute teacher" means an individual who is employed by District of Columbia Public Schools to work as a classroom teacher on a temporary basis when the regular teacher is unavailable. The term "substitute teacher" does not include an individual employed by District of Columbia Public Schools on a term or full-time assignment.

§ 32-531.02. Provision of paid leave.

(a)

(1) An employer with 100 or more employees shall provide for each employee not less than one hour of paid leave for every 37 hours worked, not to exceed 7 days per calendar year.

(2) An employer with at least 25, but not more than 99, employees shall provide for each employee not less than one hour of paid leave for every 43 hours worked, not to exceed 5 days per calendar year.

(3) An employer with 24 or fewer employees shall provide not less than one hour of paid leave for every 87 hours worked, not to exceed 3 days per calendar year.

(4) For the purposes of paragraphs (1) through (3) of this subsection, the number of employees of an employer shall be determined by the average monthly number of full-time equivalent employees for the prior calendar year. The average monthly number shall be calculated by adding the total monthly full-time equivalent employees for each month and dividing by 12.

(5) In the case of employees who are exempt from overtime payment under section 213(a)(1) of the Fair Labor Standards Act of 1938, approved June 25, 1938 (52 Stat. 1060; 29 U.S.C. § 201 *et seq.)*, employees shall not accrue leave for hours worked beyond a 40-hour work week.

(b) Paid leave accrued under this section may be used by an employee for any of the following:

(1) An absence resulting from a physical or mental illness, injury, or medical condition of the employee;

(2) An absence resulting from obtaining professional medical diagnosis

or care, or preventive medical care, for the employee, subject to the requirement of subsection (d) of this section;

(3) An absence for the purpose of caring for a child, a parent, a spouse, domestic partner, or any other family member who has any of the conditions or needs for diagnosis or care described in paragraph (1) or (2) of this subsection; or

(4) An absence if the employee or the employee's family member is a victim of stalking, domestic violence, or sexual abuse; provided, that the absence is directly related to social or legal services pertaining to the stalking, domestic violence, or sexual abuse, to:

(A) Seek medical attention for the employee or the employee's family member to recover from physical or psychological injury or disability caused by domestic violence or sexual abuse;

(B) Obtain services from a victim services organization;

(C) Obtain psychological or other counseling;

(D) Temporarily or permanently relocate;

(E) Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence or sexual abuse; or

(F) Take other actions to enhance the physical, psychological, or economic health or safety of the employee or the employee's family member or to enhance the safety of those who associate or work with the employee.

(c)

(1) Paid leave under this subchapter shall accrue in accordance with the employer's established pay period. An individual shall accrue paid leave at the beginning of his or her employment. An employee may begin to access paid leave after 90 days of service with his or her employer.

(2) If an employee is transferred to a separate division, entity, or location within the District, or transferred out of the District and then transferred back to a division, entity, or location within the District, but remains employed by the same employer, the employee shall be entitled to all paid leave accrued at the prior division, entity, or location and shall be entitled to use all paid leave as provided in this subchapter.

(3) When there is a separation from employment and the employee is rehired within one year of separation by the same employer, previously accrued unused paid leave shall be reinstated. The employee shall be entitled to use accrued paid leave and accrue additional

paid leave immediately upon the re-commencement of employment; provided, that the employee had previously been eligible to use paid leave. If there is a separation of more than one year, an employer shall not be required to reinstate accrued paid leave and the rehired employee shall be considered to have newly commenced employment.

(4) An employee who is discharged after the completion of a probationary period of 90 days or more, and is rehired within 12 months, may access paid leave immediately.

(d) An employee shall make a reasonable effort to schedule paid leave under subsection (b) of this section in a manner that does not unduly disrupt the operations of the employer.

(e) If an employee does not suffer a loss of income when absent from work, for the number of days up to the days of paid leave provided for in subsection (a)(1), (2), and (3) of this section, an employer shall not be required to provide paid leave for such employee in accordance with this subchapter. Notwithstanding the foregoing sentence, the provisions of § 32-531.08 shall apply to employees who do not suffer a loss of income when absent from work.

(f) If employees of beauty, hair, and nail salons are paid by commission (whether commission only or base wage plus commission), the sick leave rate of pay shall be calculated as follows: divide the employee's total earnings in base wages and commissions for the prior calendar year by the total hours worked as a commissioned employee during the prior calendar year. If employees do not have a prior calendar year's work history, divide the employee's total earnings in base wages and commissions since the employee's date of hire by the total hours worked as a commissioned employee since that date.

(g) Notwithstanding the requirements in subsections (a)(1)-(4) of this section, for an employee of a restaurant or bar who regularly receive [sic] tips, commissions, or other gratuities to supplement a base wage that is below the minimum wage as established in § 32-1003(a), the employer shall provide the employee not less than one hour of paid leave for every 43 hours worked, not to exceed 5 days per calendar year. The paid leave shall be compensated in accordance with the District minimum wage, as established in § 32-1003(a).

§ 32-531.03. Notification.

Paid leave shall be provided upon the written request of an employee upon notice as provided in this section. The request shall include a reason for the absence involved and the expected duration of the paid leave. If the paid leave is foreseeable, the request shall be provided at least 10

days, or as early as possible, in advance of the paid leave. If the paid leave is unforeseeable, an oral request for paid leave shall be provided prior to the start of the work shift for which the paid leave is requested. In the case of an emergency, the employer shall be notified prior to the start of the next work shift or within 24 hours of the onset of the emergency, whichever occurs sooner.

§ 32-531.04. Certification.

(a)

(1) An employer may require that paid leave under § 32-531.02(b) for 3 or more consecutive days be supported by reasonable certification.

(2) Reasonable certification may include:

(A) A signed document from a health care provider, as defined in § 32-501(5), affirming the illness of the employee;

(B) A police report indicating that the employee was a victim of stalking, domestic violence, or sexual abuse;

(C) A court order; or

(D) A signed statement from a victim and witness advocate, or domestic violence counselor, as defined in § 14-310(a)(2), affirming that the employee is involved in legal action related to stalking, domestic violence, or sexual abuse.

(3) If certification is required by an employer, the employee shall provide a copy of the certification to the employer upon the employee's return to work.

(b)

(1) This subchapter shall not require a health care professional to disclose information in violation of section 1177 of the Social Security Act, approved August 21, 1996 (110 Stat. 2029; 42 U.S.C. § 1320d-6), or the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (110 Stat. 2033; 42 U.S.C. § 1320d-2, note).

(2) All information provided to the employer under § 32-531.02 shall not be disclosed by the employer, except to the extent that the disclosure is:

(A) Requested or consented to by the employee;

(B) Ordered by a court or administrative agency; or

(C) Otherwise required by applicable federal or local law.

§ 32-531.05. Current paid leave policies.

(a) An employer with a paid leave policy providing paid leave options, such as a paid time-off program or universal leave policy, shall not be required to modify such policy if the policy offers an employee the option, at the employee's discretion, to accrue and use leave under terms and conditions that are at least equivalent to the paid leave prescribed in this subchapter.

(b) The terms and conditions of an employer's policy shall be presumed equivalent if they allow an employee to:

(1) Access and accrue paid leave at least at the same rate as or greater than the hours of paid leave provided in § 32-531.02(a)(1), (2), and (3); and

(2) Use the paid leave for the same purposes as those set forth in § 32-531.02(b), including unscheduled leave.

§ 32-531.06. Effect on existing employment benefits.

(a) This subchapter shall not diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that provides greater paid leave rights to employees than the rights established under this subchapter.

(b) The paid leave requirements under this subchapter shall not be waived for less than 3 paid leave days per calendar year by the written terms of a bona fide collective bargaining agreement; provided, that the paid leave requirements under this subchapter shall not apply to any employee in the building and construction industry covered by a bona fide collective bargaining agreement that expressly waives the requirements in clear and unambiguous terms.

§ 32-531.07. Encouragement of more generous paid leave policies.

This subchapter shall not prevent an employer from the adoption or retention of a paid leave policy more generous than the one required by this subchapter.

§ 32-531.08. Prohibited acts.

(a) A person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided by this subchapter.

(b) An employer shall not discharge or discriminate in any manner against an employee because the employee:

(1) Opposes any practice by an employer made unlawful by this subchapter;

(2) Pursuant or related to this subchapter:

(A) Complains to the employer;

(B) Files a complaint with the Department of Employment Services;

(C) Files a civil or administrative complaint alleging a violation of any provision of this subchapter;

(D) Informs any person about an employer's alleged violation of this subchapter;

(E) Cooperates with the Department of Employment Services or another person's investigation or prosecution of any alleged violation of this subchapter;

(F) Opposes any policy, practice, or act that is a violation of this subchapter; or

(G) Informs any person of his or her rights under this subchapter.

(3) Gives any information or testimony in connection with an inquiry or proceeding related to this subchapter; or

(4) Uses paid leave provided under this subchapter.

(c) Nothing in this subchapter shall prohibit an employer from establishing and enforcing a lawful policy relating to improper use of paid leave or from seeking more frequent certifications from an employee if there is evidence of a pattern of abuse of paid leave.

(d) An employer taking an adverse action against an employee within 90 days of any of the actions set forth in subsection (b)(2) of this section shall raise a rebuttable presumption that the employer has violated this subchapter.

(e) It shall be unlawful for an employer's absence control policy to count paid leave taken under this subchapter as an absence that may lead to, or result in, discipline, discharge, demotion, suspension, or other adverse action.

§ 32-531.09. Posting requirement.

(a) The Mayor shall prescribe, and the Mayor shall provide to employers, and an employer shall post and maintain in a conspicuous place, a notice that sets forth excerpts from or summaries of the pertinent provisions of this subchapter and information that pertains to the filing of a complaint under this subchapter. The notice shall be published in all languages spoken by 3% of or 500 individuals in the District of Columbia population, whichever is less.

(b)

(1) An employer who violates this section shall be assessed a civil penalty not to exceed $100 for each day that the employer fails to post the notice; provided, that the total penalty shall not exceed $500 unless the ongoing violation is willful.

(2) No liability for failure to post notice will arise under this section if the Mayor has failed to provide to the business the notice required by this section.

(c) An employer shall post the notice in English and all languages spoken by employees with Limited or no-English Proficiency, as defined in § 2-1931(5).

(d) Employers shall be furnished copies or summaries of this subchapter prepared by the Mayor on request.

§ 32-531.10. Administration.

This subchapter shall be administered by the Department of Employment Services.

§ 32-531.10a. Statute of limitations.

All civil or administrative complaints brought under this subchapter shall be filed within 3 years of the event or final instance of a series of events on which the complaint is based, except the 3-year period shall be tolled for the duration of any period during which the employer does not post the notice required under § 32-531.09, or, for civil complaints, when an administrative complaint is filed.

§ 32-531.10b. Employer records.

(a) Employers shall retain records documenting hours worked by employees and paid leave taken by employees for a period of 3 years or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this subchapter, whichever is greater, and shall allow the Mayor and the Office of the District of Columbia Auditor access to the records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this subchapter.

(b) When an issue arises as to an employee's entitlement to paid leave under this subchapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid leave taken by the employee, or does not allow the Mayor or the Office of the District of Columbia Auditor reasonable access to the records, there shall be a rebuttable presumption that the employer has violated this subchapter.

§ 32-531.11. Effect on other laws.

This subchapter shall not:

(1) Supersede any provision of law or contract that provides greater employee paid leave rights than the rights established under this subchapter; or

(2) Modify or affect any federal or District law prohibiting discrimination on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation.

§ 32-531.12. Enforcement and penalties.

(a)

(1) An employee or similarly situated employees injured by a violation of this subchapter shall be entitled to maintain a civil action or an administrative action.

(2) When an administrative complaint is filed against any employer or other person alleged to have violated this subchapter, a hearing by an administrative law judge shall be scheduled following the same procedure available in § 32-1308.01 for a violation of Chapter 13 of this title [§ 32-1301 *et seq.*].

(b) If an employer fails to allow an employee to use paid leave as required by this subchapter, the employer shall pay $500 in additional damages to the employee for each accrued day denied, regardless of whether the employee takes unpaid leave or reports to work on that day.

(c) Except as provided in § 32-531.09(b), an employer who willfully violates the requirements of this subchapter shall be subject to a civil penalty for each affected employee of $1,000 for the 1st offense, $1,500 for the 2nd offense, and $2,000 for the 3rd and each subsequent offense.

(d) If the Mayor determines that an employer has violated any provision of this subchapter, the Mayor shall order the employer to provide affirmative remedies including:

(1) Back pay for lost wages caused by the employer's violation of this subchapter;

(2) Reinstatement or other injunctive relief;

(3) Compensatory damages, punitive damages, and additional damages as provided in subsection (b) of this section; and

(4) Reasonable attorney's fees and costs of enforcement.

(e) An action may be maintained against any employer in a court of competent jurisdiction by any one or more employees for and on behalf of

himself or themselves. An employer who violates the provisions of this subchapter shall be liable to the employee or employees affected for:

(1) Back pay for lost wages caused by the employer's violation of this subchapter;

(2) Reinstatement or other injunctive relief;

(3) Compensatory damages, punitive damages, and additional damages as provided in subsection (b) of this section; and

(4) Reasonable attorney's fees and costs.

(f)

(1) Where compliance with this subchapter or regulations enacted to implement this subchapter is not forthcoming, the Mayor shall take any appropriate enforcement action to secure compliance, including initiating a civil action and, except where prohibited by another law, revoking or suspending any registration certificates, permits or licenses held or requested by the employer or person until the violation is remedied.

(2) To compensate the District for the costs of investigating and remedying the violation, the Department of Employment Services may also order the violating employer or person to pay to the District a sum of not more than $500 for each day or portion thereof and for each employee or person as to whom the violation occurred or continued. The funds recovered by the District under this subchapter shall be allocated to offset the costs of implementing and enforcing this subchapter.

(g) In any administrative or civil action brought under this subchapter, the Mayor or court shall award interest on all amounts due and unpaid at the rate of interest specified in § 28-3302(b) or § 28-3302(c).

(h) Any money awarded to an employee under this subchapter shall be enforceable by the employee to whom the debt is owed or may be collected by the District on behalf of the employee.

(i) The administrative fines and penalties collected under this section shall be deposited into the Wage Theft Prevention Fund, established by § 32-1307.01.

§ 32-531.13. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this subchapter. If rules are promulgated, the Mayor shall submit the proposed rules to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within this 30-day review period, the proposed rules shall be deemed approved.

§ 32-531.14. Hardship exemption.

The Mayor shall exempt, by rule, businesses that can prove hardship as a result of this subchapter. The Mayor shall submit the proposed hardship exemption rules to the Council for a 45-day period of review, excluding Saturdays, Sunday, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within the 45-day review period, the proposed rules shall be deemed disapproved.

§ 32-531.15. Report by the District of Columbia Auditor.

The Department of Employment Services shall prepare and submit to the Mayor and Council, annually, a report of this subchapter's economic impact on the private sector. Among other things, the Department of Employment Services shall obtain a sample of statistics on District businesses to determine:

(1) The compliance level of businesses; and

(2) Whether companies are utilizing staffing patterns to circumvent the intention of this subchapter.

§ 32-531.15a. Public education and outreach.

(a) The Department of Employment Services shall develop and implement a multilingual outreach program to inform employees of the availability of paid leave under this subchapter.

(b) The program shall include the distribution of notices and other written materials in English and in other languages to all childcare and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers within the District.

§ 32-531.16. Applicability.

(a) This subchapter shall apply 6 months after May 13, 2008.

(b) In the case of a collective bargaining agreement in effect on the effective date set forth in subsection (a) of this section, this subchapter shall apply on the earlier of the date of the termination of the agreement or the date that occurs 18 months after the effective date set forth in subsection (a) of this section.

§ 32-531.17. Appropriations contingency. [Repealed].

Repealed.

District of Columbia Workplace Fraud Act

"DCWFA"

D.C. Code §§ 32-1331.01 – 32-1331.15

§ 32-1331.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Construction services" includes, without limitation, all building or work on buildings, structures, and improvements of all types such as bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, pumping stations, heaving generators, railways, airports, terminals, docks, piers, wharves, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing and landscaping. The term "construction services" shall also include moving construction-related materials on the job site.

(2) "Employee" means every person, other than an exempt person or an independent contractor, providing construction services to another person.

(3) "Employer" means any individual, partnership, firm, association, joint stock company, trust, limited liability company, corporation, the administrator or executor of the estate of a deceased individual or the receiver, trustee, or successor of any of the same, or any other legal entity permitted to do business within the District of Columbia employing a person to provide services, or any person or group of persons acting directly or indirectly in the interest of an employer.

(4) "Exempt person" means an individual who:

(A)

(i) Performs services in a personal capacity and who employs no individuals other than a spouse, child, or immediate family member of the individual; or

(ii) Performs services free from direction and control over the means and manner of providing the services, subject only to the right of the person or entity for whom services are provided to specify the desired result;

(B) Furnishes the tools and equipment necessary to provide the service; and

(C) Operates a business that is considered inseparable from the individual for purposes of taxes, profits, and liabilities, in which the individual exercises complete control over the management and operations of the business.

(5) "Interested party" means a person with an interest in compliance with this subchapter.

(6) "Knowingly" means having actual knowledge of, or acting with deliberate ignorance or reckless disregard for, the prohibition involved.

(7) "Mayor" mean the Mayor of the District of Columbia or his or her designated agent or agents.

(8) "Stop work order" means written notice from the Mayor to an employer to cease or hold work until the employer is given notice by the Mayor to resume work.

§ 32-1331.02. Application.

This subchapter shall apply only to the construction services industry.

§ 32-1331.03. Deemed employers.

For the purposes of this subchapter, the officers of a corporation and any agents having the management thereof who knowingly permit the corporation to violate this subchapter shall be deemed to be the employers of the employees of the corporation.

§ 32-1331.04. Workplace fraud prohibited.

(a) An employer shall not improperly classify an individual who performs services for remuneration paid by an employer as an independent contractor.

(b) An employer has improperly classified an individual when an employer-employee relationship exists, as determined by subsection (c) of this section, but the employer has not classified the individual as an employee.

(c) An employer-employee relationship shall be presumed to exist when work is performed by an individual for remuneration paid by an employer, unless to the satisfaction of the Mayor, the employer demonstrates that:

(1) The individual is an exempt person; or

(2)

(A) The individual who performs the work is free from control and direction over the performance of services, subject

only to the right of the person or entity for whom services are provided to specify the desired result;

(B) The individual is customarily engaged in an independently established trade, occupation, profession, or business; and

(C) The work is outside of the usual course of business of the employer for whom the work is performed.

§ 32-1331.05. Investigation of complaints.

(a) The Mayor, pursuant to a complaint from an employee, a representative of an employee, an interested party, or on his or her own initiative, shall investigate violations of this subchapter.

(b) The Mayor may:

(1) Enter and inspect the premises or place of business, employment, or work site, and upon demand examine and copy, wholly or partly, any or all books, registers, payrolls, and other records, including those required to be made, kept, and preserved under this subchapter or under any regulation issued pursuant to this subchapter;

(2) Question an employer, employee, or other person in the premises, place of business or employment, or work site;

(3) Require from any employer full and correct statements in writing, including sworn statements, upon forms prescribed or approved by the Mayor, with respect to the payment of wages, hours, names, addresses, and such other information pertaining to remuneration to employees or independent contractors as the Mayor may determine necessary or appropriate; and

(4) Investigate such facts, conditions, or matters as the Mayor may determine necessary or appropriate to determine whether this subchapter or any regulation issued pursuant to this subchapter has been or is being violated.

(c)

(1) The Mayor, in the performance of any duty or the execution of any power prescribed by this subchapter, may administer oaths or affirmations, hold hearings, certify official acts, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance of witnesses and production of books, papers, documents, records, and testimony.

(2) In case of failure of any person to comply with a lawful subpoena or of the refusal of any witness to produce evidence or to testify to any matter about which he or she may be lawfully interrogated, the Superior Court of the District of Columbia, upon the application

of the Mayor or the Mayor's designee, may compel obedience by proceedings for contempt as provided in § 2-1831.09(e).

(d) An employer that fails to produce to the Mayor the books and records requested in the course of an investigation to determine whether the employer is in compliance with the provisions of this subchapter shall be subject to an administrative penalty not to exceed $500 per day for each day the requested records are not produced.

(e) Nothing contained in this subchapter shall be deemed a limitation on any power or authority of the Mayor under any law which may be otherwise applicable to administer or enforce this subchapter.

§ 32-1331.06. Hearings.

(a)

(1) Within 15 days after service of notice of a violation, an alleged violator may submit a written request to the Mayor to hold a hearing on the alleged violation.

(2) Upon receipt of a timely request, the Mayor shall conduct a hearing in accordance with the procedures set forth in subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], and issue a decision within 30 days after the hearing.

(b) If the Mayor, after investigation but before a hearing, has cause to believe that a person is violating any provision of this subchapter and the violation has caused, or may cause, immediate and irreparable harm to the public, the Mayor may issue a stop work order requiring the alleged violator to immediately cease and desist construction-related business activities. The order shall be served by certified mail or delivery in person.

(c)

(1) Within 10 days after service of a stop work order, the alleged violator may submit a written request to the Mayor for an expedited hearing on the alleged violation.

(2) Upon receipt of a timely request for an expedited hearing, the Mayor shall conduct a hearing within 10 days after the date of receiving the request and shall deliver to the alleged violator at his or her last known address a written notice of the hearing by any means guaranteed to be received at least 5 days before the hearing date.

(3) The Mayor shall issue a decision within 10 days after an expedited hearing.

(d) Any party aggrieved by a final order of the Mayor under subsection (c)(3) of this section may seek judicial review and appeal under § 2-510.

§ 32-1331.07. Penalties.

(a) Any employer who violates or fails to comply with the requirements of this subchapter shall be subject to a civil penalty of not less than $1,000, and not more than $5,000, for each violation. Each employee who is not properly classified in violation of this subchapter shall be considered a separate violation.

(b) An employer who violates § 32-1331.10 shall be subject to a civil penalty of not less than $5,000, and not more than $10,000, for each such violation.

(c) In addition to the penalties provided in subsections (a) and (b) of this section, an employer may be subject to a stop work order, and may be ordered to make restitution, pay any interest due, and otherwise comply with all applicable laws and regulations.

(d) Within 30 days of the final order, an employer found in violation of this subchapter shall be required to:

(1) Pay restitution to or on behalf of any individual not properly classified; and

(2) Otherwise come into compliance with all applicable labor laws, including those related to income tax withholding, unemployment insurance, wage and hour laws, and workers' compensation.

(e) Notwithstanding subsections (a) and (b) of this section, an employer who has been found to have violated this subchapter more than twice in a 2-year period:

(1) Shall have the choice of being assessed an administrative penalty of $20,000 for each employee that was not properly classified, or be debarred for 5 years; and

(2) If an employer is debarred pursuant to paragraph (1) of this subsection, the employer shall be subject to a civil penalty of not less than $5,000, and not more than $10,000, for each employee that was not properly classified, and may be ordered to make restitution, pay any interest due, and otherwise comply with all applicable laws and regulations.

(f) Any penalty issued under this section against an employer shall be in effect against any successor corporation or business entity that:

(1) Has one or more of the same principals or officers as the employer against whom the penalty was assessed; and

(2) Is engaged in the same or equivalent trade or activity.

§ 32-1331.08. Provisions of law may not be waived by agreement.

No provision of this subchapter may in any way be contravened or set

aside by private agreement. Any agreement between an employer and employee in which the employee, despite not being an exempt person, agrees to be classified as an independent contractor shall be no defense to any action to recover unpaid wages or liquidated damages.

§ 32-1331.09. Private right of action.

(a) A person aggrieved by a violation of this subchapter, or any rule issued pursuant to this subchapter, by an employer or entity may bring a civil action in any court of competent jurisdiction within 3 years after the occurrence of the alleged violation of [this] subchapter. A person whose rights have been violated under this subchapter by an employer or entity is entitled to collect:

(1) The amount of any wages, salary, employment benefits, or other compensation denied or lost to the person by reason of the violation, plus an additional equal amount in liquidated damages;

(2) Compensatory damages and an amount up to $500 for each violation of this subchapter or any rule issued pursuant to this subchapter; and

(3) In the case of unlawful retaliation, all legal or equitable relief as may be appropriate.

(b) A court may order the following:

(1) Reinstatement and the payment of back wages;

(2) Fringe benefits;

(3) Seniority rights;

(4) Treble damages for lost wages or benefits; or

(5) Any combination of the remedies set forth in paragraphs (1) through (4) of this subsection.

(c) The court shall allow for reasonable attorneys fees and costs of the action to be paid by the defendant.

§ 32-1331.10. Retaliation prohibited.

(a) An employer may not discriminate in any manner or take adverse action against any person because the person:

(1) Makes an oral or written complaint with the employer or the Mayor alleging that the employer violated any provision of this subchapter or any rule issue pursuant to this subchapter;

(2) Brings an action or initiates a proceeding involving a violation of this subchapter;

(3) Testifies in an action authorized under this subchapter or a

proceeding involving a violation of the provisions of this subchapter or any rule issued pursuant to this subchapter; or

(4) Assists in an investigation by providing information to a litigant in a civil action, the Mayor, or another agency in proceedings as provided by [this] subchapter.

(b)

(1) A person who believes that an employer has discriminated in any manner or taken adverse action against the person in violation of this subchapter may submit to the Mayor a written complaint, signed by the complainant, that alleges the discrimination.

(2) Upon receipt of a complaint, the Mayor shall conduct an investigation.

§ 32-1331.11. Provisions relating to contracts with public bodies.

(a) Where, after investigation, the Mayor determines that an employer who is or has engaged in work on a project funded by District funds is in violation of this subchapter, the Mayor shall:

(1) Withhold from payment due to the employer an amount that is sufficient to:

(A) Pay restitution to each employee according to § 32-1331.09, including any applicable prevailing wages; and

(B) Pay any benefits, taxes, or other contributions that are required by law to be paid on behalf of the employee.

(2) Upon a final determination, the Mayor shall release the full amount of the withheld funds if no violation is found, or if a violation is found, the balance of the withheld funds after all obligations are satisfied pursuant to paragraph (1) of this subsection.

(b) An employer found to be in violation of this section more than twice in a 2-year period shall be subject to debarment. A debarment under this section shall be in effect against any successor corporation or business entity that:

(1) Has one or more of the same principals or officers as the employer against whom the debarment was imposed; and

(2) Is engaged in the same or equivalent trade or activity.

§ 32-1331.12. Employer record-keeping requirements.

(a) An employer shall keep, for at least 3 years or the prevailing federal standard at the time the record is created, which shall be identified in rules issued pursuant to this chapter, whichever is greater, in or about its place of business, records of the employer containing the following information:

(1) The name, address, occupation, and classification of each employee, exempt person, or independent contractor;

(2) The rate of pay of each employee or method of payment for the independent contractor or exempt person;

(3) The classification of each individual as an employee, exempt person, or an independent contractor;

(4) The amount that is paid each pay period to each employee, exempt person, or independent contractor;

(5) The hours that each employee, exempt person, or independent contractor works each day and each work week;

(6) For all individuals who are not classified as employees, evidence that each individual is an exempt person or an independent contractor or an employee thereof; and

(7) Other information that the Mayor requires, by regulation, as necessary to enforce this subchapter.

(b)

(1) An employer shall provide each individual classified as an independent contractor or exempt person with written notice of such classification at the time the individual is hired.

(2) The written notice shall include:

(A) An explanation of the implications of the individual's classification as an independent contractor or exempt person rather than as an employee, in compliance with § 2-1933, and

(B) Contact information for the Mayor.

(3) Failure to provide a written notice shall be evidence of a knowing violation. The employer shall be liable for an administrative penalty of $500 for each individual that the employer failed to notify.

(4) The Mayor shall adopt regulations establishing specific requirements for the content and form of the notice within 180 days of April 27, 2013, and, the adoption of such regulations shall be a prerequisite to the obligation to furnish the notice.

§ 32-1331.13. Further acts prohibited; penalty.

(a) A person who knowingly incorporates or forms, or assists in the incorporation or formation of, a corporation, partnership, limited liability company, or other entity, or pays or collects a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity for the purpose of facilitating, or evading detection of, a violation of this subchapter shall be subject to a civil penalty not less than $5,000 and not to exceed $20,000.

(b) A person who knowingly conspires with, aids and abets, assists, advises, or facilitates, an employer with the intent of violating this subchapter shall be subject to a civil penalty not less than $5,000 and not to exceed $20,000.

§ 32-1331.14. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 30-day review period, the proposed rules shall be deemed approved.

§ 32-1331.15. Workplace Fraud Fund.

There is established as a nonlapsing fund the Workplace Fraud Fund ("Fund"). Each civil penalty collected pursuant to this subchapter shall be paid into the Fund to partially offset the administration, investigation, and other expenses incurred in implementing this subchapter. All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of the fiscal year, or at any other time, but shall be continually available for the administration of this subchapter without regard to fiscal year limitation, subject to authorization of Congress.

District of Columbia Wage-Hour Rules

DCMR or DCWHR

7 DCMR §§ 900-999

7-900. GENERAL PROVISIONS.

900.1 The provisions of this Chapter are promulgated pursuant to authority set forth in Reorganization Plans No. 1 of 1978 and 1980 and the District of Columbia Minimum Wage Act Revision Act of 1992, D.C. Law 9-248, effective March 25, 1993.

900.2 The Office of Wage-Hour, District of Columbia Department of Employment Services, is vested with the authority to require employers to pay minimum wages, overtime compensation and related benefits to persons employed by employers other than the United States or District of Columbia governments.

900.3 The Office of Wage-Hour, District of Columbia Department of Employment Services, plans and administers a program to ensure compliance with the District of Columbia Minimum Wage Act Revision Act, Wage Payment and Wage Collection Law, Seats Law and the Wage Garnishment Law.

900.4 Effective October 1, 1993, the minimum wage in the District of Columbia shall be determined based on the minimum wage rate set from time to time by the United States Government, plus $ 1.00.

7-901. [RESERVED].

7-902. PAYMENT OF MINIMUM WAGE.

902.1 Commencing October 1, 1993, the minimum wage required to be paid to any employee by any employer in the District of Columbia shall be the minimum wage set by the United States Government, plus $ 1.00, except that this requirement shall not apply to Wage Order Number 5, "Laundry and Dry Cleaning Occupations," issued by the former Wage-Hour Board.

902.2 Irrespective of the basis of payment, whether time rate, piece rate, bonus or commission, employers shall unconditionally pay employees all earned wages at least twice during each calendar month, on regular pay days, designated in advance by the employer, at not less than the minimum wage rate required.

902.3 The minimum wage provision shall not apply with respect to an individual:

(a) Employed in a bona fide executive, administrative or professional capacity;

(b) Employed as an outside salesperson; or

(c) Engaged in the delivery of newspapers to the home of the consumer.

902.4 The minimum wage provision does not apply in instances where other laws or regulations establish minimum rates for the following:

(a) Handicapped: All handicapped workers shall be paid at a rate not less than the minimum wage, except in those instances where a certificate has been issued by the United States Department of Labor that authorizes the payment of less to handicapped workers under section 214(c) of the Fair Labor Standards Act.

(b) Job Training Partnership Act (JTPA): Individuals employed under provisions of the Job Training Partnership Act shall be paid wages pursuant to that Act.

(c) Older Americans Act (OAA): Individuals employed under provisions of the Older Americans Act shall be paid pursuant to that Act.

(d) Youth Employment Act (YEA): Individuals employed under provisions of the Youth Employment Act shall be paid wages pursuant to that Act.

(e) Adult Learners: Newly hired persons 18 years of age or older may be paid the minimum wage established by the United States Government for a period not to exceed 90 calendar days.

(f) Students: Students employed by institutions of higher education may be paid the minimum wage established by the United States Government.

(g) Minors: Individuals under the age of 18 years old may be paid the minimum wage established by the United States Government.

902.5 The overtime provision shall not apply with respect to an individual:

(a) Employed as a private household worker who lives on the premises of the employer.

(b) Employed as a companion for the aged or infirm.

902.6 Overtime compensation under the Act shall be paid in accordance with Title 29 Code of Federal Regulations, Part 778, Overtime Compensation Under the Fair Labor Standards Act of 1938, as amended, except that Subpart A (General Considerations), Subpart E (Exceptions From the Regular Rate Principles), Subpart G (Miscellaneous),

and Section 778.101 (Maximum Non-overtime Hours) shall have no force and effect.

7-903. GRATUITIES.

903.1 The employer shall advise the employee of provisions as they relate to determining wages based on gratuities and an employer taking a gratuity allowance from the wage of an employee shall have the burden of proving the employee received gratuities at least as much as the gratuity allowance taken.

7-904. LODGING AND MEALS.

904.1 When the employer furnishes lodging to the employee, allowances may be taken at a level which does not exceed more than 80 percent of the rental value as determined by a comparison with the value of similar accommodations in the vicinity of those furnished.

904.2 Allowances for meals may be taken at a rate not to exceed $ 2.12 for each meal made available to the employee by the employer. An allowance for not more than one meal shall be taken for four or less hours of work; over four hours of work, an allowance of not more than two meals shall be taken. Allowances may be taken for meals at a rate not to exceed $ 6.36 per day for an employee who lives at the place of employment.

7-905. COMMISSIONS.

905.1 No employer shall be deemed to have violated the provisions, as outlined in Section 4(c) of the Act, by employing any employee of a retail or service establishment in excess of 40 hours per work week provided that:

(a) The regular rate of pay of such employee is in excess of one and one-half times the minimum wage; and

(b) More than half of the employee's compensation for a representative period (not less than one month) represents commissions on goods or services.

905.2 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.

7-906. SPLIT SHIFTS.

906.1 In addition to the wages required by this Chapter, the employer shall

pay the employee for one additional hour at the minimum wage for each day during which the employee works a split shift. This provision is not applicable to an employee who lives on the premises of the employer.

7-907. MINIMUM DAILY WAGE.

907.1 The employer shall pay the employee for at least four (4) hours for each day on which the employee reports for work under general or specific instructions but is given no work or is given less than four hours of work, except that if the employee is regularly scheduled for less than four hours a day, such employee shall be paid for the hours regularly scheduled. The minimum daily wage shall be calculated as follows: payment at the employee's regular rate for the hours worked, plus payment at the minimum wage for the hours not worked, as described above.

7-908. UNIFORMS AND PROTECTIVE CLOTHING.

908.1 In addition to the wages required by this Chapter, the employer shall pay the cost of purchase, maintenance and cleaning of uniforms and protective clothing (including hats and shoes) required by the employer or by law, except that in lieu of purchasing, maintaining and cleaning plain and washable uniforms the employer may pay 15 cents ($ 0.15) per hour in addition to the wages required by this Chapter, with the weekly maximum payment required being six dollars ($ 6.00). Such payment of 15 cents ($ 0.15) per hour shall not apply in the case of protective clothing.

908.2 When the employer purchases but the employee maintains and cleans plain and washable uniforms, the payment shall be 10 cents ($ 0.10) per hour in addition to the wages required by this Chapter.

908.3 When the employer cleans and maintains but the employee purchases plain and washable uniforms, the payment shall be 8 cents ($ 0.08) per hour in addition to the wages required by this Chapter.

7-909. TRAVEL EXPENSES.

909.1 In addition to the wages required by this Chapter, the employer shall pay the cost of travel expenses incurred by the employee in performance of the business of the employer.

7-910. TOOLS.

910.1 In addition to the wages required by this Chapter, the employer shall pay the cost of purchasing and maintaining any tools required of the employee in the performance of the business of the employer.

7-911. MAINTENANCE OF PAYROLL RECORDS.

911.1 Every employer shall make, keep and preserve for a period of not less than three (3) years an accurate record for each employee containing the following information:

(a) Full name of employee, including last, first and middle initial;

(b) Social Security Number;

(c) Occupation of the employee;

(d) Address of the employee, including ZIP Code;

(e) Date of birth;

(f) Regular hourly rate of pay, total number of hours worked each work day and each workweek and time of day and day of week on which employee's workweek begins;

(g) Basis on which wages are paid;

(h) A daily record of the hours of beginning and stopping work and the hours of beginning and ending the meal recess if the employee works a split shift;

(i) Total daily or weekly straight-time earnings and excess overtime earnings for the workweek, or total earnings for non-overtime hours worked during the workweek and total earnings for overtime hours worked during the workweek;

(j) Total gross and net wages paid each pay period and deductions from and/or additions to wages;

(k) Date of payment and the pay period covered by the payment.

(l) In addition to the information required in Section 903, if the employee is a tipped employee, the application of tips to the minimum wage rate must be accurately documented and retained by the employer.

(m) In addition to the information required in Section 905, if the employee is paid by commission, the following information shall also be retained by the employer:

(1) Notation on the payroll record to readily identify each employee receiving wages based on commission;

(2) An indication for each workweek during which the employee's regular rate of pay is in excess of one and one-half (1 1/2) times the applicable minimum hourly rate;

(3) A copy of an Agreement or a written summary of the terms under which the employee and employer have formally understood the Commission basis of compensation. The Agreement or written summary must show the applicable representative period, the date it was entered into and the period in which it remains in effect; and

(4) Total compensation paid each pay period showing separately the amount of commission and the amount of non-commission straight-time earnings.

911.2 Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the date of the wage payment, gross wages paid (showing separately the earnings for overtime and non-overtime hours worked), an itemization of allowances and deductions from and additions to wages, net wages paid and hours worked during the pay period. For an employee who is paid commissions, the itemized statement shall also show separately the amount of commissions and the amount of noncommission straight-time earnings.

7-912. POSTINGS.

912.1 Every employer who is subject to any provision of this Chapter shall keep a copy or summary of this Chapter and any applicable postings or literature in a form prescribed or approved by the Department of Employment Services, posted in a conspicuous and accessible place in or about the premises at which any employee covered is employed.

7-913. INVESTIGATION.

913.1 The Department of Employment Services shall have the authority to:

(a) Investigate and ascertain the wages of persons employed in any occupation in the District of Columbia;

(b) Enter and inspect the place of business or employment of any employer in the District of Columbia in order to:

(1) Examine and inspect any books, registers, payrolls and other records as may be deemed necessary or appropriate;

(2) Copy books, registers, payrolls and other records as may be deemed necessary or appropriate; and

(3) Question an employee for the purpose of ascertaining whether the provisions of this Chapter have been and are being complied with, and

(c) Require from any employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses and any other information that pertains to the employment of the employees as may be deemed appropriate or necessary to carry out the purposes of this Chapter.

7-914. COLLECTION OF UNPAID WAGES.

914.1 Any employer who fails to pay the wages required by this Chapter shall pay to the Office of Wage-Hour, Department of Employment Services, an amount equal to the unpaid wages, which amount shall be distributed by the Office of Wage-Hour to employees due said unpaid wages.

914.2 Unpaid wages which cannot be paid due to the inability to locate employees or refusal of employees to accept said unpaid wages shall escheat to the District of Columbia Government in accordance with D.C. Code, Sections 42-201-242.

7-915. PROHIBITED ACTS.

No employer shall charge an employee or require or permit an employee to pay directly or indirectly to the employer for breakages, walkouts, mistakes on customer checks and similar charges, or to pay fines, assessments or charges if the payment reduces the wages below the minimum wage.

7-916. PRESERVATION OF EXISTING RIGHTS AND LIABILITIES.

Rights accrued and liabilities incurred prior to October 1, 1993, under Wage Orders issued by the Wage-Hour Board, shall be governed by provisions of the respective Wage Order issued by the Wage-Hour Board.

7-917. SEPARABILITY.

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of the Chapter and the application thereof to other persons or circumstances shall not be affected thereby.

7-918. to 976. [RESERVED].

7-977. AMOUNT OF WAGES OF EMPLOYEES WHICH MAY BE SUBJECTED TO GARNISHMENT PROCEEDINGS FOR PAY PERIODS OTHER THAN WEEKLY.

977.1 The maximum part of the disposable wages of any individual for pay periods other than weekly pay periods which may be subjected to garnishment are established as follows:

(a) Where the pay period is for less than one (1) workweek, the exemption from garnishment shall be the same as that for a weekly pay period. Thus, so long as the Federal minimum wage prescribed by § 6(a)(1) of the Fair Labor Standards Act of 1938 is three dollars and thirty-five cents ($ 3.35) an hour, the following formula shall apply:

(1) If an individual's disposable wages paid or payable for a pay period of less than one (1) workweek are one hundred dollars and fifty cents ($ 100.50), thirty times three dollars and thirty-five cents (30 x $ 3.35) or less, wages may not be garnished in any amount;

(2) If an individual's disposable wages paid or payable for a pay period of less than one (1) workweek are more than one hundred dollars and fifty cents ($ 100.50), but less than one hundred thirty-four dollars ($ 134), only the amount above one hundred dollars and fifty cents ($ 100.50) of disposable wages shall be subject to garnishment; or

(3) If an individual's disposable wages paid or payable for a pay period of less than one (1) workweek are one hundred thirty-four dollars ($ 134) or more, not more than twenty-five percent (25%) of disposable wages shall be subject to garnishment.

(b) Where the pay period is longer than one (1) workweek, the weekly statutory exemption formula shall be transformed to a formula, providing equivalent restrictions on wage garnishment as follows:

(1) The twenty-five percent (25%) part of the formula shall apply to the aggregate disposable wages for all the work-weeks or fractions thereof compensated by the pay for the pay period;

(2) The "multiple" of the Federal minimum hourly wage equivalent to that applicable to the disposable wages for one (1) week shall be represented by the following formula: the number of workweeks, or fractions thereof times (x) thirty (30) times three dollars and thirty-five cents ((x) x 30 x $ 3.35) (the applicable Federal minimum wage). For the purpose of this formula, a calendar month is considered to consist of four and one-third (4 1/3) workweeks. Thus, so long as the Federal minimum wage is three dollars and thirty five cents ($ 3.35) an hour, the "multiple" applicable to the disposable wages shall be computed as follows:

(i) For a two week period, two hundred and one dollars ($ 201, two times thirty times three dollars and thirty-five cents (2 x 30 x $ 3.35);

(ii) For a monthly period, four hundred thirty-five dollars and fifty cents ($ 435.50), four and one-third times thirty times three dollars and thirty-five cents (4 1/3 x 30 x $ 3.35); and

(iii) For a semimonthly period, two hundred and seventeen dollars and seventy-five cents ($ 217.75), two and one-sixth times thirty times three dollars and thirty-five cents (2 1/6 x 30 x $ 3.35).

(3) The "multiple" for any other pay period longer than one (1) week shall be computed in a manner consistent with this paragraph.

7-977.2 This section became effective January 1, 1981.

7-978. to 998. [RESERVED].

7-999. DEFINITIONS.

999.1 The following words and phrases used in these sections applicable to the District of Columbia Wage Payment and Wage Collection Law shall have the following meanings ascribed:

Administrative Capacity – A person employed in a bona fide administrative capacity shall mean an employee who meets all of these tests:

(1) Primary duty must be either (a) responsible office or nonmanual work (in other words, "white collar" work) directly related to management policies or general business operations or (b) responsible work that is directly related to academic instructions or training carried on in the administration of a school system or educational establishment; and

(2) Customarily and regularly exercise discretion and independent judgment, as distinguished from using skills and following procedures. He or she must have authority to make important decisions; and

(3) Must (a) regularly assist a proprietor or a bona fide executive or administrative employee or (b) perform work under only general supervision along specialized or technical lines requiring special training, experience or knowledge or (c) execute special assignments under general supervision; and

(4) Must not spend more than 20 percent of his or her workweek (less than 40 percent if employed by a retail or service establishment) on

nonexempt work, that is, work not directly and closely related to his or her administrative duties; and

(5) Must be paid on a salary or fee basis at a rate of not less than $ 155 a week.

Special proviso for high salaried administrative employees: an administrative employee who is paid on a salary or fee basis at a rate of at least $ 250 a week is exempt if (a) his or her primary duty consists of responsible office or nonmanual work directly related to management policies or general business operations or (b) responsible work in the administration of a school system or educational establishment or institution or department or subdivision thereof that is directly related to the academic instruction or training; and such primary duty includes work requiring the exercise of discretion and independent judgment.

Interpretations of the term "administrative capacity" shall be made in accordance with Title 29 Code of Federal Regulations, Part 541, Defining the Terms "Executive," "Administrative," "Professional" and "Outside Salesman."

Executive Capacity – A person employed in a bona fide executive capacity shall mean an employee who meets all of these tests:

(1) Primary duty must be management of the enterprise, or of a recognized department or subdivision; and

(2) Regularly direct the work of at least two full-time employees; and

(3) Have authority to hire and fire, or recommend hiring and firing; or whose recommendation on these and other actions affecting employees is given weight; and

(4) Regularly exercise discretionary powers; and

(5) Devote no more than 20 percent of his or her workweek (less than 40 percent if he or she is employed by a retail or service establishment) to nonexempt work, that is, not directly and closely related to his or her executive duties; and

(6) Paid on a salary basis at a rate of at least $ 155 a week.

Two exceptions to the percentage tests on nonexempt work: (1) the employee is in sole charge of an independent or physically separated branch establishment; (2) owns a 20 percent interest in the enterprise or a recognized department or subdivision. The percentage tests on nonexempt work do not apply to such an executive.

Special proviso for high salaried executives: an executive who is paid at least $ 250 a week on a salary basis is exempt if he or she

regularly directs the work of at least two full-time employees and his or her primary duty is management of the enterprise or a recognized department or subdivision. The percentage tests on nonexempt work do not apply to such an executive.

Interpretations of the term "executive capacity" shall be made in accordance with Title 29 Code of Federal Regulations, Part 541, Defining the Terms "Executive," "Administrative," "Professional" and "Outside Salesman."

Professional Capacity – A person employed in a bona fide professional capacity shall mean an employee who meets all of these tests:

(1) Primary duty must be either (a) work requiring knowledge of an advanced type in a field of science or learning. Ususally obtained by a prolonged course of specialized instruction and study or (b) work that is original and creative in character in a recognized field of artistic endeavor and the result of which depends primarily on his or her invention, imagination, or talent or (c) work as a teacher certified or recognized as such in the school system or educational institution by which he or she is employed; and

(2) Consistently exercise descretion and judgment; and

(3) Do work that is mainly intellectual and varied, as distinguished from routine or mechanical duties; and

(4) Must not spend more than 20 percent of his or her workweek on activities not essentially a part of and necessarily incident to professional duties; and

(5) Paid on a salary or fee basis at a rate of not less than $ 170 a week. This requirement does not apply to (a) an employeee [employee] who is the holder of a valid license and is engaged in the practice of law or medicine; or (b) an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program; or (c) an employee employed and engaged as a teacher.

Special proviso for high salaried professional employees: a professional employee who is paid on a salary or fee basis at a rate of at least $ 250 a week is exempt if (a) his or her primary duty consists of work in the learned field or work as a teacher in the activity of imparting knowledge which requires consistent exercise of discretion and judgment or (b) primary duty is artistic work that requires invention, imagination or talent. The 20 percent test on nonexempt work does not apply to such a professional employee.

Interpretations of the term "professional capacity" shall be made in accordance with Title 29 Code of Federal Regulations, Part 541, Defining the Terms "Executive," "Administrative," "Professional" and "Outside Salesman."

999.2 The terms defined in the Act shall have the meaning set forth in the Act. In addition, when used in this Chapter, the following words shall have the meaning ascribed:

Act - means the District of Columbia Minimum Wage Act Revision Act of 1992.

Babysitter - means a person employed to care for children under the age of 18 in or about the private home in which the children reside. Persons who spend more than 20 percent of their time on household work not directly related to caring for children shall not be deemed a babysitter. Interpretations of the term "babysitter" shall be made in accordance with Title 29 Code of Federal Regulations, Part 552, "Application of the Fair Labor Standards Act to Domestic Service."

Casual Babysitter- means an individual who is employed as a babysitter on an irregular or intermittent basis and whose vocation is not babysitting. Interpretations of who is a "casual babysitter" shall be made in accordance with Title 29 Code of Federal Regulations, Part 552.5 "Casual Basis" and Part 552.104 "Babysitting Services Performed on a Casual Basis."

Companion for the Aged or Infirm - includes a person employed to provide fellowship, care and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Included in the services performed by a companion is household work directly related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes and other similar services. Persons who spend more than 20 percent of their time on household work not directly related to caring for the aged or infirm shall not be deemed a companion for the aged or infirm.

Institution of Higher Education - is an institution above the secondary level, such as a college or university, a junior college or a professional school of engineering, law, library science, social work, etc. It is one that is recognized by a national accrediting agency or association as determined by the Secretary of Education. Any further interpretations of the term shall be made in accordance with Title 29 Code of Federal Regulations, Chapter V, Section 519.12(b).

Minimum wage - means the District of Columbia minimum wage.

Private household worker - means an occupation performed by an individual in or about the private home of the person by whom he/she is employed (including temporary dwelling places and separate and

distinct dwellings maintained by individuals or families in apartment houses or hotels) including, but not limited to cooks, maids, butlers, personal attendants, housekeepers, homemakers, child mentors, child monitors, day workers, nurses, home attendants, launderers, caretakers, gardeners, yard workers, chauffeurs of automobiles for family use, personal secretaries and babysitters other than casual babysitters.

Parking Lot Attendant/Parking Garage Attendant - means any person who is employed to park or supervise the parking of automobiles at a parking lot or parking garage. A person employed as a cashier, guard or maintenance person shall not be deemed as an "attendant at a parking lot or parking garage."

Outside Salesperson- means an employee who meets the following tests:

(1) Employed for the purpose of and customarily and regularly works away from the employer's place of business in (a) selling tangible or intangible items such as goods, insurance, stocks, bonds, or real estate or (b) obtaining orders or contracts for services or use of facilities, such as radio time, advertising, typewriter repairs; and

(2) Hours of work not related to his or her outside sales do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer.

Interpretations of the term "outside salesperson" shall be made in accordance with Title 29 Code of Federal Regulations, Part 541, Defining the Terms "Executive," "Administrative," "Professional" and "Outside Salesman."

Split Shift - means a schedule of daily hours in which the hours worked are not consecutive, except that a schedule in which the total time out for meals does not exceed one hour shall not be deemed a "split shift."

Tipped Employees - are those who engage in occupations in which tips are customarily and regularly received from patrons. Tipped employees include, but are not limited to, waiters, waitresses, counter personnel who serve customers, bus persons, server helpers, service bartenders, car wash attendants, parking lot attendants, parking garage attendants, bootblacks, hotel doorkeepers, bellhops, hat checkers, cosmetologists, manicurists, pedicurists, shampooers and aestheticians.

Maryland Wage Payment and Collection Law

"MWPCL"

Md. Code, Lab. & Empl. Art., §§ 3-501 – 3-509

§ 3-501. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Employer. -- "Employer" includes any person who employs an individual in the State or a successor of the person.

(c) Wage. --

(1) "Wage" means all compensation that is due to an employee for employment.

(2) "Wage" includes:

(i) a bonus;

(ii) a commission;

(iii) a fringe benefit;

(iv) overtime wages; or

(v) any other remuneration promised for service.

§ 3-502. Payment of wage

(a) Pay periods. --

(1) Each employer:

(i) shall set regular pay periods; and

(ii) except as provided in paragraph (2) of this subsection, shall pay each employee at least once in every 2 weeks or twice in each month.

(2) An employer may pay an administrative, executive, or professional employee less frequently than required under paragraph (1)(ii) of this subsection.

(b) Paydays. -- If the regular payday of an employee is a nonworkday, an employer shall pay the employee on the preceding workday.

(c) Form of payment. -- Each employer shall pay a wage:

(1) in United States currency; or

(2) by a check that, on demand, is convertible at face value into United States currency.

(d) Printing Social Security number on employee's paycheck prohibited. --

(1) In this subsection, "employer" includes a governmental unit.

(2) An employer may not print or cause to be printed an employee's Social Security number on the employee's wage payment check, an attachment to an employee's wage payment check, a notice of direct deposit of an employee's wage, or a notice of credit of an employee's wage to a debit card or card account.

(e) Effect of section. -- This section does not prohibit the:

(1) direct deposit of the wage of an employee into a personal bank account of the employee in accordance with an authorization of the employee; or

(2) credit of the wage of an employee to a debit card or card account from which the employee is able to access the funds through withdrawal, purchase, or transfer if:

(i) authorized by the employee; and

(ii) any fees applicable to the debit card or card account are disclosed to the employee in writing in at least 12 point font.

(f) Void agreements. -- An agreement to work for less than the wage required under this subtitle is void.

§ 3-503. Deductions

An employer may not make a deduction from the wage of an employee unless the deduction is:

(1) ordered by a court of competent jurisdiction;

(2) authorized expressly in writing by the employee;

(3) allowed by the Commissioner because the employee has received full consideration for the deduction; or

(4) otherwise made in accordance with any law or any rule or regulation issued by a governmental unit.

§ 3-504. Notice of wages and paydays

(a) Responsibility of employer. -- An employer shall give to each employee:

(1) at the time of hiring, notice of:

(i) the rate of pay of the employee;

(ii) the regular paydays that the employer sets; and

(iii) leave benefits;

(2) for each pay period, a statement of the gross earnings of the

employee and deductions from those gross earnings; and

(3) at least 1 pay period in advance, notice of any change in a payday or wage.

(b) Wage increase. -- This section does not prohibit an employer from increasing a wage without advance notice.

§ 3-505. Payment on termination of employment; accrued leave

(a) In general. -- Except as provided in subsection (b) of this section, each employer shall pay an employee or the authorized representative of an employee all wages due for work that the employee performed before the termination of employment, on or before the day on which the employee would have been paid the wages if the employment had not been terminated.

(b) Payment of accrued leave. -- An employer is not required to pay accrued leave to an employee if:

(1) the employer has a written policy that limits the compensation of accrued leave to employees;

(2) the employer notified the employee of the employer's leave benefits in accordance with § 3-504(a)(1) of this subtitle; and

(3) the employee is not entitled to payment for accrued leave at termination under the terms of the employer's written policy.

§ 3-506. Reciprocal agreements

To collect wages that employers unlawfully withhold, the Commissioner may enter into a reciprocal agreement with a labor department or other similar unit that has jurisdiction in another state over wage collection.

§ 3-507. Enforcement

(a) In general. -- Whenever the Commissioner determines that this subtitle has been violated, the Commissioner:

(1) may try to resolve any issue involved in the violation informally by mediation;

(2) with the written consent of the employee, may ask the Attorney General to bring an action in accordance with this section on behalf of the employee; and

(3) may bring an action on behalf of an employee in the county where the violation allegedly occurred.

(b) Award. --

(1) If, in an action under subsection (a) of this section, a court finds

that an employer withheld the wage of an employee in violation of this subtitle and not as a result of a bona fide dispute, the court may award the employee an amount not exceeding 3 times the wage, and reasonable counsel fees and other costs.

(2) If wages of an employee are recovered under this section, they shall be paid to the employee without cost to the employee.

§ 3-507.1. Order to pay wages.

(a) Complaint. -- On receipt of a complaint for failure to pay wages that do not exceed $ 5,000, the Commissioner shall:

(1) send a copy of the complaint to the employer alleged to have failed to pay wages; and

(2) require a written response to the complaint within 15 days.

(b) Review and investigation; order to pay or dismissal. --

(1) The Commissioner:

(i) shall review the complaint and any response to it; and

(ii) may investigate the claim.

(2) On the basis of the review and any investigation, the Commissioner may:

(i) issue an order to pay wages under subsection (c) of this section if the Commissioner determines that this subtitle has been violated; or

(ii) dismiss the claim.

(c) Order to pay wages; hearing. --

(1) The Commissioner may issue an order to pay wages that:

(i) describes the alleged violation;

(ii) directs payment of wages to the complainant; and

(iii) if appropriate, orders the payment of interest at the rate of 5% per year accruing from the date the wages are owed.

(2) The Commissioner shall send the order to pay wages to the complainant and to the employer at the employer's last known business address by both regular mail and certified mail, return receipt requested.

(3) Within 30 days after receipt of the order to pay wages, the employer may request a de novo administrative hearing, which shall be conducted in accordance with Title 10, Subtitle 2 of the State

Government Article.

(4) On receipt of a request for a hearing, the Commissioner shall schedule a hearing.

(5) If a hearing is not requested, the order to pay wages shall become a final order of the Commissioner.

(6)

(i) If a petition for review is not filed within 30 days of the issuance of the final order, the Commissioner may proceed in District Court of the county where the employer resides or has a place of business to enforce payment.

(ii) In a proceeding under this subsection, the Commissioner is entitled to judgment in the amount of the order to pay wages and any interest due on a showing that:

1. the order to pay wages and interest, if any, was assessed against the employer;
2. no appeal is pending;
3. the ordered wages and interest, if any, are wholly or partly unpaid; and
4. the employer was duly served with a copy of the order to pay wages and interest, if any, in accordance with this section.

§ 3-507.2. Action to recover unpaid wages

(a) In general. -- Notwithstanding any remedy available under § 3-507 of this subtitle, if an employer fails to pay an employee in accordance with § 3-502 or § 3-505 of this subtitle, after 2 weeks have elapsed from the date on which the employer is required to have paid the wages, the employee may bring an action against the employer to recover the unpaid wages.

(b) Award and costs. -- If, in an action under subsection (a) of this section, a court finds that an employer withheld the wage of an employee in violation of this subtitle and not as a result of a bona fide dispute, the court may award the employee an amount not exceeding 3 times the wage, and reasonable counsel fees and other costs.

(c) Liability for unpaid wages. --

(1) In this subsection, "construction services" has the meaning stated in § 3-901 of this title.

(2) In an action brought under subsection (a) of this section, a general contractor on a project for construction services is jointly and severally liable for a violation of this subtitle that is committed by a subcontractor, regardless of whether the subcontractor is in a direct contractual relationship with the general contractor.

(3) A subcontractor shall indemnify a general contractor for any wages, damages, interest, penalties, or attorney's fees owed as a result of the subcontractor's violation unless:

(i) indemnification is provided for in a contract between the general contractor and the subcontractor; or

(ii) a violation of the subtitle arose due to a lack of prompt payment in accordance with the terms of the contract between the general contractor and the subcontractor.

§ 3-508. Prohibited acts; penalties

(a) Prohibited acts of employer. -- An employer may not willfully violate this subtitle.

(b) Prohibited acts of employee. -- An employee may not knowingly make to a governmental unit or official of a governmental unit a false statement with respect to any investigation or proceeding under this subtitle, with the intent that the governmental unit or official consider or otherwise act in connection with the statement.

(c) Penalties. --

(1) An employer who violates subsection (a) of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $ 1,000.

(2) An employee who violates subsection (b) of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $ 500.

§ 3-509. Short title

This subtitle may be cited as the Maryland Wage Payment and Collection Law.

Maryland Wage and Hour Law

Md. Code, Lab. & Empl. Art., §§ 3-401 – 3-431

§ 3-401. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Employer. -- "Employer" includes a person who acts directly or indirectly in the interest of another employer with an employee.

(c) Federal Act. -- "Federal Act" means the federal Fair Labor Standards Act of 1938.

§ 3-402. Legislative findings and purpose

(a) Legislative findings. -- The General Assembly finds that wages in some occupations in the State have been insufficient to provide adequate maintenance and to protect health.

(b) Statement of purpose. -- The purpose of this subtitle is to set minimum wage standards in the State to:

(1) provide a maintenance level that is consistent with the needs of the population for their efficiency, general well-being, and health;

(2) safeguard employers and employees against unfair competition;

(3) increase the stability of industry;

(4) increase the buying power of employees; and

(5) decrease the need to spend public money for the relief of employees.

§ 3-403. Scope of subtitle

This subtitle does not apply to an individual who:

(1) is employed in a capacity that the Commissioner defines, by regulation, to be administrative, executive, or professional;

(2) is employed in a nonadministrative capacity at an organized camp, including a resident or day camp;

(3) is under the age of 16 years and is employed no more than 20 hours in a week;

(4) is employed as an outside salesman;

(5) is compensated on a commission basis;

(6) is a child, parent, spouse, or other member of the immediate family of the employer;

(7) is employed in a drive-in theater;

(8) is employed as part of the training in a special education program for emotionally, mentally, or physically handicapped students under a public school system;

(9) is employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, or horticultural commodities, poultry, or seafood;

(10) engages in the activities of a charitable, educational, nonprofit, or religious organization if:

(i) the service is provided gratuitously; and

(ii) there is, in fact, no employer-employee relationship;

(11) is employed in a cafe, drive-in, drugstore, restaurant, tavern, or other similar establishment that:

(i) sells food and drink for consumption on the premises; and

(ii) has an annual gross income of $ 400,000 or less;

(12) is employed in agriculture if, during each quarter of the preceding calendar year, the employer used no more than 500 agricultural-worker days;

(13) is engaged principally in the range production of livestock; or

(14) is employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation that, in the region of employment, has been and customarily and generally is recognized as having been paid on that basis, if:

(i) the individual:

1. commutes daily from the permanent residence of the individual to the farm where the individual is employed; and

2. during the preceding calendar year, was employed in agriculture less than 13 weeks; or

(ii) the individual:

1. is under the age of 17;

2. is employed on the same farm as a parent of the individual or a person standing in the place of the parent; and

3. is paid at the same rate that an employee who is at least 17 years old is paid on the same farm.

§ 3-404. Effect of subtitle

This subtitle does not diminish:

(1) the right of employees to bargain collectively with their employers through representatives whom the employees choose to establish wages or other conditions of employment in excess of the applicable minimum under this subtitle; or

(2) a right of an employee that is granted under the federal Act.

§ 3-405. Void agreements

An agreement to work for less than the wage required under this subtitle is void.

§§ 3-406, 3-407. [Reserved]

Reserved.

§ 3-408. Powers to ascertain wages and obtain evidence

(a) Power to ascertain wages. -- The Commissioner may ascertain what wage is paid in any occupation in the State.

(b) Evidence. --

(1) In an investigation under this subtitle, the Commissioner shall try to negotiate with an employer to obtain the testimony or documentary evidence that is needed to determine whether a violation exists.

(2) If the Commissioner is unable to obtain evidence by negotiation, the Commissioner may issue a subpoena for the attendance of a witness to testify or the production of documentary evidence that relates to the subject matter of the complaint.

(3) Each application for a subpoena under this subsection shall:

(i) be under oath; and

(ii) describe in detail:

1. the nature, purpose, and scope of the investigation;

2. each witness to be subpoenaed; and

3. each record to be inspected.

(4) A subpoena may not be issued unless the application is approved by the Attorney General as to form and substance.

(5) If a person fails to comply with a subpoena issued under this subsection, on a complaint filed by the Commissioner, a circuit court may compel compliance with the subpoena.

§ 3-409. Advisory Committee on Wage and Hour Law

Repealed by Acts 1993, ch. 552, § 1, effective October 1, 1993.

§ 3-410. Regulations

In addition to any regulation specifically required by this subtitle, regulations that the Commissioner adopts to carry out this subtitle may include:

(1) definitions of the terms "administrative capacity", "executive capacity", "professional capacity", and "outside salesman";

(2) a scale of wages that is suitable for learners and apprentices but is at least 80% of the minimum wage under this subtitle; and

(3) a wage for a special case or class of case if the Commissioner finds the wage appropriate to:

(i) avoid undue hardship;

(ii) prevent the curtailment of employment opportunity; and

(iii) safeguard the minimum wage under this subtitle.

§§ 3-411, 3-412. [Reserved]

Reserved.

§ 3-413. Payment of minimum wage required

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) "Employer" includes a governmental unit.

(3) "Small employer" means an employer that employs 14 or fewer employees.

(b) Except as provided in subsection (d) of this section and §§ 3-413.1 and 3-414 of this subtitle, each employer shall pay:

(1) to each employee who is subject to both the federal Act and this subtitle, at least the greater of:

(i) the minimum wage for that employee under the federal Act; or

(ii) the State minimum wage set under subsection (c) of this section; and

(2) to each other employee who is subject to this subtitle, at least the greater of:

(i) the highest minimum wage under the federal Act; or

(ii) the State minimum wage set under subsection (c) of this section.

(c) State minimum wage. --

(1) Subject to § 3-413.1 of this subtitle and except as provided in paragraph (2) of this subsection, the State minimum wage rate is:

(i) for the 12-month period beginning July 1, 2017, $ 9.25 per hour;

(ii) for the 18-month period beginning July 1, 2018, $ 10.10 per hour;

(iii) for the 12-month period beginning January 1, 2020, $ 11.00 per hour;

(iv) for the 12-month period beginning January 1, 2021, $ 11.75 per hour;

(v) for the 12-month period beginning January 1, 2022, $ 12.50 per hour;

(vi) for the 12-month period beginning January 1, 2023, $ 13.25 per hour;

(vii) for the 12-month period beginning January 1, 2024, $ 14.00 per hour; and

(viii) beginning January 1, 2025, $ 15.00 per hour.

(2) Subject to § 3-413.1 of this subtitle, the State minimum wage rate for a small employer is:

(i) for the 18-month period beginning July 1, 2018, $ 10.10 per hour;

(ii) for the 12-month period beginning January 1, 2020, $ 11.00 per hour;

(iii) for the 12-month period beginning January 1, 2021, $ 11.60 per hour;

(iv) for the 12-month period beginning January 1, 2022, $ 12.20 per hour;

(v) for the 12-month period beginning January 1, 2023, $ 12.80 per hour;

(vi) for the 12-month period beginning January 1, 2024, $13.40 per hour;

(vii) for the 12-month period beginning January 1, 2025, $ 14.00 per hour;

(viii) for the 6-month period beginning January 1, 2026, $ 14.60 per hour; and

(ix) beginning July 1, 2026, $ 15.00 per hour.

(d) An employer may pay an employee a wage that equals a rate of 85% of the State minimum wage established under this section if the employee is under the age of 18 years.

§ 3-413.1. Temporary suspension of minimum wage increase as result of negative employment statistics

(a) "Board" defined. -- In this section, "Board" means the Board of Public Works.

(b) Annual determination of employment; exception. --

(1) Subject to subsection (d) of this section and except as provided in paragraph (2) of this subsection, on or before October 1, 2020, and October 1 each year thereafter until October 1, 2024, the Board shall determine whether the seasonally adjusted total employment from the Current Employment Statistics series as reported by the U.S. Bureau of Labor Statistics for the most recent 6-month period is negative as compared with the immediately preceding 6-month period.

(2) The Board is not required to make a determination under paragraph (1) of this subsection if the Board has previously temporarily suspended an increase to the minimum wage rate specified under § 3-413(c) of this subtitle.

(c) In general. --

(1) Subject to subsection (d) of this section, the Board may temporarily suspend an increase to the minimum wage rate specified under § 3-413(c) of this subtitle if the Board determined under subsection (b)(1) of this section that the seasonally adjusted total employment is negative.

(2) If the seasonally adjusted total employment is negative, the Board may consider the performance of State revenues in the previous 6 months, as reported by the Office of the Comptroller, in determining whether to temporarily suspend an increase to the minimum wage rate specified under § 3-413(c) of this subtitle.

(d) Limitation. -- The Board may temporarily suspend an increase to the minimum wage rate under subsection (c)(1) of this section only one time.

(e) Effect of suspension. -- If the Board temporarily suspends an increase to the minimum wage rate specified under § 3-413(c) of this subtitle:

(1) the minimum wage rate in effect for the period beginning the following January 1 shall remain the same as the rate that was in effect for the immediately preceding 12-month period;

(2) the remaining minimum wage rates specified in § 3-413 of this subtitle shall take effect 1 year later than the date specified;

(3) the Board shall notify the Commissioner that the minimum wage rate increase for the period beginning the following January 1 is suspended for 1 year; and

(4) a rate increase under §§ 7-307, 16-201.3, and 16-201.4 of the Health - General Article for the immediately following fiscal year may not go into effect.

§ 3-414. Individuals with disabilities [Subject to amendment effective October 1, 2020; amended version follows this section]

(a) "Federal certificate" defined. -- In this section, "federal certificate" means a certificate that the United States Department of Labor issues to a work activities center or other sheltered workshop to allow the workshop to pay an individual less than the wage otherwise required for that individual under the federal Act.

(b) Authority to waive minimum wage; when not authorized. --

(1) Subject to the limitations in this section, the Commissioner may authorize a work activities center or other sheltered workshop to pay an employee with a disability less than the minimum wage otherwise required under this subtitle for the employee.

(2) The Commissioner may not authorize a work activities center or other sheltered workshop to pay an employee with a disability less than the minimum wage under paragraph (1) of this subsection if the work activities center or workshop was not authorized to do so before October 1, 2016.

(3) A work activities center or other sheltered workshop may pay a new employee with a disability less than the minimum wage under paragraph (1) of this subsection only if the requirements of § 7-1014 of the Health - General Article are met.

(c) Grant of authority. --

(1) To authorize a work activities center or other sheltered workshop to pay less than the minimum wage, the Commissioner shall:

(i) issue a State certificate that sets wages for employees of the workshop;

(ii) accept a federal certificate for the workshop; or

(iii) grant an exception for the workshop but only if:

1. the Commissioner has not issued a State certificate for the workshop;

2. the workshop is not eligible for a federal certificate; and

3. the Commissioner investigates and holds a hearing on the exception.

(2) The Commissioner shall accept a federal certificate if a work activities center or other sheltered workshop submits that certificate to the Commissioner within 10 days after the workshop receives the certificate.

(d) Term of certificate. --

(1) Each certificate that the Commissioner issues under this section shall state the period for which the certificate is in effect.

(2) The acceptance of a federal certificate does not apply automatically to an individual whom a work activities center or other sheltered workshop continues to employ after the individual completes a training program that the workshop runs.

(e) Revocation of acceptance. --

(1) The Commissioner may revoke acceptance of a federal certificate if:

(i) the United States Department of Labor revokes the federal certificate; or

(ii) at any time before revocation by the Department of Labor and after an investigation and hearing, the Commissioner finds good cause to revoke the acceptance.

(2) The Commissioner shall send notice of a hearing under this subsection, by certified mail, to the holder of the federal certificate at least 30 days before the hearing.

§ 3-414. Individuals with disabilities (Amendment effective October 1, 2020.)

(a) "Federal certificate" defined. -- In this section, "federal certificate" means a certificate that the United States Department of Labor issues to a work activities center or other sheltered workshop to allow the workshop to pay an individual less than the wage otherwise required for that individual under the federal Act.

(b) Waiver of minimum wage prohibited; exceptions. --

(1) Beginning October 1, 2020, the Commissioner may not authorize a work activities center or other sheltered workshop to pay an employee with a disability less than the minimum wage otherwise required under this subtitle for the employee.

(2) Beginning October 1, 2020, a work activities center or workshop may pay an employee with a disability less than the federal prevailing wage of pay to the extent authorized by federal law if the work activities center or other sheltered workshop:

(i) was authorized by the Commissioner before October 1, 2016, to pay an employee with a disability less than the minimum wage that was otherwise required under this subtitle for the employee through the acceptance of a federal certificate; and

(ii) the work activities center or workshop maintains the federal certificate.

(c) Submission of federal certificate for exception from minimum wage requirements. -- The Commissioner shall accept a federal certificate if a work activities center or other sheltered workshop submits that certificate to the Commissioner within 10 days after the workshop receives the certificate.

(d) Term of certificate. --

(1) Each certificate that the Commissioner issues under this section shall state the period for which the certificate is in effect.

(2) The acceptance of a federal certificate does not apply automatically to an individual whom a work activities center or other sheltered workshop continues to employ after the individual completes a training program that the workshop runs.

(e) Revocation of acceptance. --

(1) The Commissioner may revoke acceptance of a federal certificate if:

(i) the United States Department of Labor revokes the federal certificate; or

(ii) at any time before revocation by the Department of Labor and after an investigation and hearing, the Commissioner finds good cause to revoke the acceptance.

(2) The Commissioner shall send notice of a hearing under this subsection, by certified mail, to the holder of the federal certificate at least 30 days before the hearing.

§ 3-415. Payment of overtime.

(a) General requirement. -- Except as otherwise provided in this section, each employer shall pay an overtime wage of at least 1.5 times the usual hourly wage, computed in accordance with § 3-420 of this subtitle.

(b) Exceptions for employers. -- This section does not apply to an

employer that is:

(1) subject to 49 U.S.C. § 10501;

(2) a nonprofit concert promoter, legitimate theater, music festival, music pavilion, or theatrical show; or

(3) an amusement or recreational establishment, including a swimming pool, if the establishment:

(i) operates for no more than 7 months in a calendar year; or

(ii) for any 6 months during the preceding calendar year, has average receipts that do not exceed one-third of the average receipts for the other 6 months.

(c) Exceptions for employees. -- This section does not apply to an employer with respect to:

(1) an employee for whom the United States Secretary of Transportation may set qualifications and maximum hours of service under 49 U.S.C. § 31502;

(2) a mechanic, partsperson, or salesperson who primarily sells or services automobiles, farm equipment, trailers, or trucks, if the employer is engaged primarily in selling those vehicles to ultimate buyers and is not a manufacturer;

(3) a driver if the employer is engaged in the business of operating taxicabs; or

(4) unless a collective bargaining agreement between an employer and a labor organization provides otherwise, an employee of the employer if:

(i) the employer is subject to Title II of the federal Railway Labor Act;

(ii) the employer does not require the employee to work more than 40 hours during 1 workweek; and

(iii) the employee voluntarily enters into an agreement with another employee to trade scheduled work hours and as a result the employee works more than 40 hours during a single workweek.

§§ 3-416, 3-417. [Reserved]

Reserved.

§ 3-418. Cost of advantages

(a) "Board, lodging, or other advantage" defined. -- In this section, "board,

lodging, or other advantage" means a facility or service that an employer customarily provides to an employee.

(b) Inclusion in wage. -- Unless a collective bargaining agreement excludes board, lodging, or other advantage from the wage of an employee, an employer may include, as part of the wage, the cost that the employer incurs in providing the advantage to the employee.

(c) Cost. -- An employer shall compute the cost of board, lodging, or other advantage in accordance with the regulations that the Commissioner adopts.

(d) Regulations. -- The Commissioner may provide, by regulation, for computation of the cost of board, lodging, or other advantage on the basis of:

(1) the actual cost; or

(2) the reasonable cost of the board, lodging, or other advantage for a defined class of employees and in a defined area, based on:

(i) the average cost to the employer or groups of employers who are situated similarly;

(ii) the average value to groups of employees; or

(iii) any other appropriate measure of fair value.

§ 3-419. Tips

(a) Scope of section. --

(1) This section applies to each employee who:

(i) is engaged in an occupation in which the employee customarily and regularly receives more than $ 30 each month in tips;

(ii) has been informed by the employer about the provisions of this section; and

(iii) has kept all of the tips that the employee received.

(2) Notwithstanding paragraph (1)(iii) of this subsection, this section does not prohibit the pooling of tips.

(b) Computation of wage. -- Subject to the limitations in this section, an employer may include, as part of the wage of an employee to whom this section applies:

(1) an amount that the employer sets to represent the tips of the employee; or

(2) if the employee or representative of the employee satisfies the Commissioner that the employee received a lesser amount in tips, the lesser amount.

(c) Limit. -- The tip credit amount that the employer may include under subsection (b) of this section may not exceed the minimum wage established under § 3-413 of this subtitle for the employee less $ 3.63.

(d) Regulations. --

(1) The Commissioner shall adopt regulations, in consultation with payroll service providers and restaurant industry trade group representatives, to require restaurant employers that include a tip credit as part of the wage of an employee to provide tipped employees with a written or electronic wage statement for each pay period that shows the effective hourly tip rate as derived from employer-paid cash wages plus all reported tips for tip credit hours worked each workweek of the pay period.

(2) The Commissioner shall provide notification of the tip credit wage statement regulations on the Department's website.

§ 3-420. Overtime.

(a) In general. -- Except as otherwise provided in this section, an employer shall compute the wage for overtime under § 3-415 of this subtitle on the basis of each hour over 40 hours that an employee works during 1 workweek.

(b) Music or theater craft or trade. -- Notwithstanding § 3-415(b)(2) of this subtitle, an employer that is not a nonprofit organization and is a concert promoter, legitimate theater, music festival, music pavilion, or theatrical show shall pay overtime for a craft or trade employee as required in subsection (a) of this section.

(c) Farm work. -- The wage for overtime may be computed on the basis of each hour over 60 hours that an employee works during 1 workweek for an employee who:

(1) is engaged in agriculture; and

(2) is exempt from the overtime provisions of the federal Act.

(d) Bowling establishments; infirmaries. -- The wage for overtime may be computed on the basis of each hour over 48 hours that an employee works during 1 workweek:

(1) for an employee of a bowling establishment; and

(2) for an employee of an institution that:

(i) is not a hospital; but

(ii) is engaged primarily in the care of individuals who:

1. are aged, intellectually disabled, or sick or have a mental disorder; and

2. reside at the institution.

§ 3-421. Involuntary overtime prohibition

(a) "Nurse" defined. -- In this section, "nurse" means a licensed practical nurse or a registered nurse as defined in § 8-101 of the Health Occupations Article.

(b) Overtime prohibited. -- Except as provided in subsections (c) and (d) of this section, an employer may not require a nurse to work more than the regularly scheduled hours according to the predetermined work schedule.

(c) Overtime prohibited -- Exceptions. -- A nurse may be required to work overtime if:

(1) the work is a consequence of an emergency situation which could not have been reasonably anticipated;

(2) the emergency situation is nonrecurring and is not caused by or aggravated by the employer's inattention or lack of reasonable contingency planning;

(3) the employer has exhausted all good faith, reasonable attempts to obtain voluntary workers during the succeeding shifts;

(4) the nurse has critical skills and expertise that are required for the work;

(5) the standard of care for a patient assignment requires continuity of care through completion of a case, treatment, or procedure; and

(6)

(i) the employer has informed the nurse of the basis for the employer's direction; and

(ii) that basis satisfies the other requirements for mandatory overtime listed under this subsection.

(d) Overtime prohibited -- Additional exceptions. -- In addition to the provisions of subsection (c) of this section, a nurse may be required to work overtime if:

(1) a condition of employment includes on-call rotation; or

(2) the nurse works in community-based care.

(e) Construction. -- This section may not be construed to prohibit a nurse from voluntarily agreeing to work more than the number of scheduled hours provided in this section.

(f) Responsibility for patient's care. --

(1) Except as provided in subsections (c) and (d) of this section, a nurse may not be considered responsible for the care of a patient beyond the nurse's predetermined work schedule if the nurse:

(i) has notified another appropriate nurse of the patient's status; and

(ii) has transferred responsibility for the patient's care to another appropriate nurse or properly designated individual.

(2) The employer shall exhaust all good faith, reasonable attempts to ensure that appropriate staff is available to accept responsibility for a patient's care beyond a nurse's predetermined work schedule.

§ 3-422. [Reserved]

Reserved.

§ 3-423. Copies and posting of law

(a) Copies. -- On request by an employer, the Commissioner shall provide without charge a copy of any summary or regulation to the employer.

(b) Place for posting. -- Each employer shall keep posted conspicuously in each place of employment:

(1) a summary of this subtitle that the Commissioner approves; and

(2) a copy or summary of each regulation that is adopted to carry out this subtitle.

§ 3-424. Wage records

Each employer shall keep, for at least 3 years, in or about the place of employment, a record of:

(1) the name, address, and occupation of each employee;

(2) the rate of pay of each employee;

(3) the amount that is paid each pay period to each employee;

(4) the hours that each employee works each day and workweek; and

(5) other information that the Commissioner requires, by regulation, as reasonable to enforce this subtitle.

§ 3-425. Inspection of wage records

(a) Required. -- The Commissioner shall enter a place of employment to:

(1) question employees to determine whether an employer has been and is complying with this subtitle and regulations adopted to carry out this subtitle;

(2) inspect and copy each record that an employer keeps on wages and hours of employees; and

(3) require each employer:

(i) to attest to the truthfulness of each record that is copied and to sign the copy; or

(ii) at the option of the employer, to submit a complete, written statement about the wages, hours, name, and address of each employee, on forms that the Commissioner provides or approves.

(b) Confidentiality. -- Each record or statement that the Commissioner or an authorized representative of the Commissioner obtains under subsection (a) of this section is confidential and may be shown only to the Commissioner, a court, or a member of the Committee.

§ 3-426. Judicial review and enforcement

(a) Review allowed. --

(1) A person aggrieved by a regulation or order to pay wages that the Commissioner adopts under this subtitle may file a complaint in circuit court for the county within 60 days after the date of publication of the regulation or order to pay wages to have it modified or set aside.

(2) A copy of the complaint shall be served on the Commissioner.

(b) Effect of filing. -- Unless the court specifically orders otherwise, the commencement of proceedings under this section may not operate as a stay of the regulation or order to pay wages.

(c) Scope of review. --

(1) The court shall determine whether a regulation or order to pay wages is in accordance with law.

(2) If a finding of fact is supported by substantial evidence, the finding is conclusive.

§ 3-427. Action against employer by or for employee

(a) Action by employee. -- If an employer pays an employee less than the wage required under this subtitle, the employee may bring an action against the employer to recover:

(1) the difference between the wage paid to the employee and the wage required under this subtitle;

(2) an additional amount equal to the difference between the wage paid to the employee and the wage required under this subtitle as liquidated damages; and

(3) counsel fees and other costs.

(b) Assignment of claims. -- On the written request of an employee who is entitled to bring an action under this section, the Commissioner may:

(1) take an assignment of the claim in trust for the employee;

(2) ask the Attorney General to bring an action in accordance with this section on behalf of the employee; and

(3) consolidate 2 or more claims against an employer.

(c) Defense. -- The agreement of an employee to work for less than the wage to which the employee is entitled under this subtitle is not a defense to an action under this section.

(d) Damages and costs. --

(1) If a court determines that an employee is entitled to recovery in an action under this section, the court shall award to the employee:

(i) the difference between the wage paid to the employee and the wage required under this subtitle;

(ii) except as provided in paragraph (2) of this subsection, an additional amount equal to the difference between the wage paid to the employee and the wage required under this subtitle as liquidated damages; and

(iii) reasonable counsel fees and other costs.

(2) If an employer shows to the satisfaction of the court that the employer acted in good faith and reasonably believed that the wages paid to the employee were not less than the wage required under this subtitle, the court shall:

(i) determine that liquidated damages should not be awarded; or

(ii) award, as liquidated damages, any amount less than the amount specified in paragraph (1)(ii) of this subsection.

§ 3-428. Prohibited acts; penalties

(a) "Complaint" defined. -- In this section, "complaint" includes a written or oral complaint, claim, or assertion of right by an employee, regarding the payment of wages under this subtitle, that is made to:

(1) the employer or a supervisor, manager, or foreman employed by the employer whether it is made through the employer's internal grievance process or otherwise; or

(2) the Commissioner or an authorized representative of the Commissioner.

(b) Prohibited acts of employers. --

(1) An employer may not:

(i) pay or agree to pay less than the wage required under this subtitle;

(ii) hinder or delay the Commissioner or an authorized representative of the Commissioner in the enforcement of this subtitle;

(iii) take adverse action against an employee because the employee:

1. makes a complaint that the employee has not been paid in accordance with this subtitle;

2. brings an action under this subtitle or a proceeding that relates to the subject of this subtitle; or

3. has testified in an action under this subtitle or a proceeding related to the subject of this subtitle; or

(iv) violate any other provision of this subtitle.

(2) Adverse action prohibited under paragraph (1) of this subsection includes:

(i) discharge;

(ii) demotion;

(iii) threatening the employee with discharge or demotion; and

(iv) any other retaliatory action that results in a change to the terms or conditions of employment that would dissuade a reasonable employee from making a complaint, bringing an action, or testifying in an action under this subtitle.

(c) Prohibited acts of employees. -- An employee may not:

(1) make a groundless or malicious complaint to the Commissioner or an authorized representative of the Commissioner;

(2) in bad faith, bring an action under this subtitle or a proceeding related to the subject of this subtitle; or

(3) in bad faith, testify in an action under this subtitle or a proceeding related to the subject of this subtitle.

(d) Penalty. -- A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $ 1,000.

(e) Standard of proof. -- An employer may not be convicted under this section unless the evidence demonstrates that the employer had

knowledge of the relevant complaint, testimony, or action for which the prosecution for retaliation is sought.

§§ 3-429, 3-430. [Reserved]

Reserved.

§ 3-431. Short title

This subtitle may be cited as the Maryland Wage and Hour Law.

Maryland Workplace Fraud Act

"MWFA"

Md. Code, Lab. & Empl. Art., §§ 3-901 – 3-920

§ 3-901. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Construction services. -- "Construction services" includes the following services provided in connection with real property:

(1) building;

(2) reconstructing;

(3) improving;

(4) enlarging;

(5) painting;

(6) altering;

(7) maintaining; and

(8) repairing.

(c) Employer. -- "Employer" means any person that employs an individual in the State.

(d) Exempt person. -- "Exempt person" means an individual who:

(1) performs services in a personal capacity and employs no individuals other than:

(i) a spouse of the exempt person;

(ii) children of the exempt person; or

(iii) parents of the exempt person;

(2) performs services free from direction and control over the means and manner of providing the services, subject only to the right of the person or entity for whom services are provided to specify the desired result;

(3) furnishes the tools and equipment necessary to provide the service;

(4) operates a business that is considered inseparable from the individual for purposes of taxes, profits, and liabilities:

(i) in which the individual:

1. owns all of the assets and profits of the business; and

2. has sole, unlimited, personal liability for all of the debts and liabilities of the business, unless the business is organized as a single-owned corporate entity, to which sole, unlimited personal liability does not apply; and

(ii) for which:

1. the individual does not pay taxes for the business separately but reports business income and losses on the individual's personal tax return; and

2. if the business is organized as a corporate entity and the individual otherwise qualifies as an exempt person under this subsection, the individual files a separate federal informational tax return for the entity as required by law;

(5) exercises complete control over the management and operations of the business; and

(6) exercises the right and opportunity on a continuing basis to perform the services of the business for multiple entities at the individual's sole choice and discretion.

(e) Knowingly. -- "Knowingly" means having actual knowledge, deliberate ignorance, or reckless disregard for the truth.

(f) Landscaping services. -- "Landscaping services" includes the following services:

(1) garden maintenance and planting;

(2) lawn care including fertilizing, mowing, mulching, seeding, and spraying;

(3) seeding and mowing of highway strips;

(4) sod laying;

(5) turf installation, except artificial;

(6) ornamental bush planting, pruning, bracing, spraying, and removal; and

(7) ornamental tree planting, pruning, bracing, spraying, and removal.

(g) Place of business. --

(1) "Place of business" means the office or headquarters of the employer.

(2) "Place of business" does not include a work site at which the employer has been contracted to perform services.

(h) Public body. -- "Public body" means:

(1) the State;

(2) a unit of State government or an instrumentality of the State; or

(3) any political subdivision, agency, person, or entity that is a party to a contract for which 50% or more of the money used is State money.

§ 3-902. Scope

This subtitle applies only to the following industries:

(1) construction services; and

(2) landscaping services.

§ 3-903. Failure to properly classify employee

(a) Prohibition. -- An employer may not fail to properly classify an individual who performs work for remuneration paid by the employer.

(b) What constitutes failure to properly classify. -- An employer has failed to properly classify an individual when an employer-employee relationship exists as determined under subsection (c) of this section but the employer has not classified the individual as an employee.

(c) Presumption of creation of employer-employee relationship; exceptions. --

(1) Except as provided in § 3-903.1 of this subtitle, for purposes of enforcement of this subtitle only, work performed by an individual for remuneration paid by an employer shall be presumed to create an employer-employee relationship, unless:

(i) the individual is an exempt person; or

(ii) an employer demonstrates that:

1. the individual who performs the work is free from control and direction over its performance both in fact and under the contract;

2. the individual customarily is engaged in an independent business or occupation of the same nature as that involved in the work; and

3. the work is:

A. outside of the usual course of business of the person for whom the work is performed; or

B. performed outside of any place of business of the person for whom the work is performed.

(2) Work is outside of the usual course of business of the person for whom it is performed under paragraph (1) of this subsection if:

(i) the individual performs the work off the employer's premises;

(ii) the individual performs work that is not integrated into the employer's operation; or

(iii) the work performed is unrelated to the employer's business.

(3) By contract, an employer may engage another business entity, which may have its own employees, to do the same type of work in which the employer engages, at the same location where the employer is working, without establishing an employer-employee relationship between the two contracting entities.

(d) Regulations. -- The Commissioner shall adopt regulations to explain further and provide specific examples of the application of subsection (c) of this section.

§ 3-903.1. Presumption that employer-employee relationship exists inapplicable in certain situations.

The presumption that an employer-employee relationship exists under § 3-903(c)(1) of this subtitle does not apply if:

(1) an employer produces for inspection by the Commissioner:

(i) a written contract, signed by the employer and business entity, that:

1. describes the nature of the work to be performed by the business entity;

2. describes the remuneration to be paid for the work performed by the business entity; and

3. includes an acknowledgment by the business entity of the business entity's obligations under this article to:

A. withhold, report, and remit payroll taxes on behalf of all employees working for the business entity;

B. pay unemployment insurance taxes for all employees working for the business entity; and

C. maintain workers' compensation insurance;

(ii) an affidavit signed by the business entity indicating that the business entity is an independent contractor who is available to work for other business entities;

(iii) a current certificate of status of the business entity, issued by the State Department of Assessments and Taxation, indicating that the business entity is in good standing; and

(iv) proof that the business entity holds all occupational licenses required by State and local authorities for the work performed; and

(2) the employer provided to each individual classified as an independent contractor or exempt person a written notice under § 3-914 of this subtitle.

§ 3-904. Knowing failure to properly classify employee

(a) Prohibition. -- An employer may not knowingly fail to properly classify an individual who performs work for remuneration paid by the employer.

(b) What constitutes knowing failure to classify. -- An employer has knowingly failed to properly classify an individual when:

(1) an employer-employee relationship exists as determined under § 3-903(c) of this subtitle; and

(2) the employer has knowingly failed to properly classify the individual as an employee.

(c) Evidence. -- The Commissioner shall consider, as strong evidence that the employer did not knowingly fail to properly classify an individual, whether:

(1) before a complaint was filed against the employer or the Commissioner began an investigation of the employer, the employer:

(i) sought and obtained evidence that the individual:

1. is an exempt person; or

2. as an independent contractor:

A. withholds, reports, and remits payroll taxes on behalf of all individuals working for the independent contractor;

B. pays unemployment insurance taxes for all individuals working for the independent contractor; and

C. maintains workers' compensation insurance; and

(ii) provided to the exempt person or independent contractor a written notice as required by § 3-914 of this subtitle; or

(2) the employer:

(i)

1. classifies all workers who perform the same or substantially the same tasks for the employer as independent contractors; and

2. reports the income of the workers to the Internal Revenue Service as required by federal law; and

(ii) has received a determination from the Internal Revenue Service that the individual or a worker who performs the same or substantially the same task as the individual is an independent contractor.

(d) Regulations. -- The Commissioner shall adopt regulations to provide guidance as to what constitutes the evidence relevant to the determination of whether an employer knowingly failed to properly classify an employee.

§ 3-905. Investigation

(a) In general. -- The Commissioner shall investigate as necessary to determine compliance with this subtitle and regulations adopted under this subtitle.

(b) Confidentiality of written or oral statement. --

(1) Any written or oral complaint or statement made by a person as part of an investigation under this section is confidential and may not be disclosed without the consent of the person until the investigation is concluded and a citation is issued.

(2) Any written or oral statement made by an individual alleged to be employed by the respondent as part of an investigation under this section is confidential and may not be disclosed without the consent of the individual.

(c) Commissioner may enter place of business. -- The Commissioner may enter a place of business or work site to:

(1) observe work being performed;

(2) interview individuals on the work site, including those identified as employees and independent contractors; and

(3) review and copy records.

(d) Production of records. --

(1) The Commissioner may require each employer to:

(i) subject to paragraph (2) of this subsection, identify and produce for copying or inspection all records relevant to the classification of each individual;

(ii) attest to the truthfulness of each record that is copied in accordance with subsection (c)(3) of this section or each copy of a record that is provided to the Commissioner under item (i) of this paragraph and to sign the copy; or

(iii) at the option of the employer, submit a written statement about the classification of each employee on the form provided by the Commissioner, with any relevant records attached.

(2) An employer may comply with a requirement to produce records under paragraph (1)(i) of this subsection by producing copies of the records.

(e) Fine for failure to produce records. -- An employer that fails to produce records for copying or inspection or a written statement under subsection (d) of this section within 30 business days after the Commissioner's request, or an extension of time mutually agreed on by both parties, shall be subject to a fine not exceeding $ 500 per day for each day the records are not produced.

(f) Subpoena. --

(1) The Commissioner may issue a subpoena for testimony and the production of records.

(2) If a person fails to comply with a subpoena issued under this subsection, the Commissioner may file a complaint in the circuit court for the county where the person resides, is employed, or has a place of business, requesting an order directing compliance with the subpoena.

§ 3-906. Citation

(a) Issuance. -- After the employer has provided all the records requested under § 3-905(d) of this subtitle, the Commissioner shall issue a citation to the employer or close the investigation within 90 days.

(b) Contents. -- Each citation shall:

(1) describe in detail the nature of the alleged violation;

(2) cite the provision of this subtitle or any regulation that the employer is alleged to have violated; and

(3) state the civil penalty, if any, that the Commissioner proposes to assess.

(c) Mailing to employer. -- Within a reasonable time after issuance of a citation, the Commissioner shall send by certified mail to the employer:

(1) a copy of the citation; and

(2) notice of the opportunity to request a hearing.

(d) Written request for hearing. -- Within 15 days after an employer receives a notice under subsection (c) of this section, the employer may submit a written request for a hearing on the citation and proposed penalty.

(e) Citation becomes final order if hearing not requested within time period. -- If a hearing is not requested within 15 days, the citation, including any penalties, shall become a final order of the Commissioner.

(f) Delegation of authority to hold hearing; time of hearing. --

(1) If the employer requests a hearing, the Commissioner shall delegate to the Office of Administrative Hearings the authority to hold a hearing and issue findings of fact, conclusions of law, and an order, and assess a penalty under § 3-909 of this subtitle in accordance with Title 10, Subtitle 2 of the State Government Article.

(2) The employer is entitled to a hearing within 90 days after a timely request is made under this subsection, unless the employer waives that right.

(g) Copies of all relevant evidence. -- Within 15 days after a request, in accordance with Title 4 of the General Provisions Article and the applicable regulations of the Department and the Office of Administrative Hearings, the Commissioner shall provide copies of all relevant evidence, including a list of potential witnesses, on which the Commissioner intends to rely at any administrative hearing under this subtitle.

(h) Burden of proof. -- The Commissioner has the burden of proof to show that an employer has knowingly failed to properly classify an individual as an employee.

(i) Final order. -- A decision of an administrative law judge issued in accordance with Title 10, Subtitle 2 of the State Government Article shall become a final order of the Commissioner.

(j) Judicial review. -- Any party aggrieved by a final order of the Commissioner under subsection (i) of this section may seek judicial review and appeal under §§ 10-222 and 10-223 of the State Government Article.

§ 3-907. Finding of violation and compliance

(a) Notice to other agencies. -- If, after investigation, the Commissioner determines that an employer failed to properly classify an individual as an employee in violation of § 3-903 of this subtitle, or knowingly failed to properly classify as an employee an employee in violation of § 3-904 of this subtitle, and issues a citation, the Commissioner shall notify the Comptroller, the Office of Unemployment Insurance, the Insurance Administration, and the Workers' Compensation Commission to enable

these agencies to assure an employer's compliance with their laws, utilizing their own definitions, standards, and procedures.

(b) Compliance requirements for violation of § 3-903. --

(1) An employer found in violation of § 3-903 of this subtitle by a final order of a court or an administrative unit shall be required, within 45 days after the final order:

(i) to pay restitution to any individual not properly classified; and

(ii) to otherwise come into compliance with all applicable labor laws, including those related to income tax withholding, unemployment insurance, wage laws, and workers' compensation.

(2) The requirement for compliance with applicable labor laws under paragraph (1)(ii) of this subsection may include requiring the employer to enter into an agreement, within 45 days after the final order, with a governmental unit for payment of any amounts owed by the employer to the unit.

(3) The requirement for compliance with applicable labor laws under paragraph (1)(ii) of this subsection:

(i) may not require payments for more than a 12-month period; and

(ii) may not require payments due for a period before the 12-month period before the citation was issued.

(c) Compliance requirements for violation of § 3-904. -- An employer found in violation of § 3-904 of this subtitle by a final order of a court or an administrative unit shall be required, within 45 days after the final order:

(1) to pay restitution to any individual not properly classified; and

(2) to otherwise come into compliance with all applicable labor laws, including those related to income tax withholding, unemployment insurance, wage laws, and workers' compensation.

§ 3-908. Civil penalty -- Violation of § 3-903

(a) No penalty for timely compliance. -- An employer in violation of § 3-903 of this subtitle who comes into timely compliance with all applicable labor laws as required by § 3-907(b) of this subtitle may not be assessed a civil penalty.

(b) Amount. --

(1) An employer in violation of § 3-903 of this subtitle who fails to

come into timely compliance with all applicable labor laws as required by § 3-907(b) of this subtitle shall be assessed a civil penalty of up to $ 1,000 for each employee for whom the employer is not in compliance.

(2) In determining the amount of the penalty, the Commissioner shall consider the factors set forth in § 3-909(b) of this subtitle.

(c) Number of final orders. --

(1) An employer may be assessed civil penalties under this section by only one final order of a court or administrative unit for the same actions constituting noncompliance with applicable labor laws as required by § 3-907(b) and (c) of this subtitle.

(2) Notwithstanding paragraph (1) of this subsection, an employer may be ordered to make restitution, pay any interest due, and otherwise comply with all applicable laws and regulations by multiple final orders of a court and all relevant administrative units, including the Comptroller, the Office of Unemployment Insurance, the Insurance Administration, and the Workers' Compensation Commission.

(d) Prospective effect of penalty. -- Any penalty issued under this section against an employer shall be in effect against any successor corporation or business entity that:

(1) has one or more of the same principals or officers as the employer against whom the penalty was assessed; and

(2) is engaged in the same or equivalent trade or activity.

§ 3-909. Civil penalty -- Violation of § 3-904

(a) Amount. -- An employer found to have knowingly failed to properly classify an individual in violation of § 3-904 of this subtitle shall be assessed a civil penalty of up to $ 5,000 for each employee who was not properly classified.

(b) Considerations. -- In determining the amount of the penalty, the Commissioner or the administrative law judge shall consider:

(1) the gravity of the violation;

(2) the size of the employer's business;

(3) the employer's good faith;

(4) the employer's history of violations under this subtitle; and

(5) whether the employer:

(i) has been found, by a court or an administrative unit, to have deprived the employee of any rights to which the employee

would have been entitled under a State protective labor law, including but not limited to:

1. any provision of this article;
2. the State prevailing wage law, under §§ 17-221 and 17-222 of the State Finance and Procurement Article; or
3. the living wage law, under § 18-108 of the State Finance and Procurement Article; and

(ii) has made restitution and come into compliance with all such State protective labor laws with respect to the employee.

(c) Restitution. -- If the court or an administrative unit determines that an individual or class of individuals is entitled to restitution as a result of the employer's violation of § 3-904 of this subtitle, the court or administrative unit:

(1) shall award each individual any restitution to which the individual may be entitled; and

(2) may award each individual an additional amount up to three times the amount of such restitution.

(d) Double administrative penalties. -- An employer in violation of § 3-904 of this subtitle may be assessed double the administrative penalties set forth in subsection (a) of this section if the employer has been found previously to have violated this subtitle by a final order of a court or an administrative unit.

(e) Administrative penalty for three or more violations. -- An employer who has been found by a final order of a court or an administrative unit to have violated § 3-904 of this subtitle three or more times may be assessed an administrative penalty of up to $ 20,000 for each employee.

(f) Number of final orders. --

(1) An employer may be assessed civil penalties under this section or § 8-201.1 or § 9-402.1 of this article by only one final order of a court or administrative unit for the same actions constituting a violation of this subtitle.

(2) Notwithstanding paragraph (1) of this subsection, an employer may be ordered to make restitution, pay any interest due, and otherwise comply with all applicable laws and regulations by orders of a court and all relevant administrative units, including the Comptroller, the Office of Unemployment Insurance, the Insurance Administration, and the Workers' Compensation Commission.

(g) Prospective effect of penalty. -- Any penalty issued under this section

against an employer shall be in effect against any successor corporation or business entity that:

(1) has one or more of the same principals or officers as the employer against whom the penalty was assessed, unless the principal or officer did not or with the exercise of reasonable diligence could not know of the violation for which the penalty was imposed; and

(2) is engaged in the same or equivalent trade or activity.

§ 3-910. Cooperation among various agencies

As authorized by State and federal law, units within the Maryland Department of Labor and the Department of Budget and Management, the Secretary of State, the Comptroller, the Maryland Insurance Administration, and other State agencies shall cooperate and share information concerning any suspected failure to properly classify an individual as an employee.

§ 3-911. Civil action

(a) In general. --

(1) Except as provided in paragraph (2) of this subsection, an individual who has not been properly classified as an employee may bring a civil action for economic damages against the employer for any violation of this subtitle.

(2) An individual may not bring a civil action under this section if a final order of an administrative unit or of a court has been issued under § 3-906 of this subtitle.

(b) Timing. -- An action filed under this section shall be filed within 3 years after the date the cause of action accrues.

(c) Relief. -- If the court determines that an individual or class of individuals is entitled to judgment in an action against an employer filed in accordance with this section, the court may award each individual:

(1) any damages to which the individual may be entitled under subsection (a) of this section;

(2) an additional amount up to three times the amount of any such damages, if the employer knowingly failed to properly classify the individual;

(3) reasonable counsel fees and other costs of the action; and

(4) any other appropriate relief.

§ 3-912. Discriminatory action by employer

(a) Prohibition. -- An employer may not discriminate in any manner or take adverse action against an individual because the individual:

(1) files a complaint with the employer or the Commissioner alleging that the employer violated any provision of this subtitle or any regulation adopted under this subtitle;

(2) brings an action under this subtitle or a proceeding involving a violation of this subtitle; or

(3) testifies in an action authorized under this subtitle or a proceeding involving a violation of this subtitle.

(b) Written complaint. --

(1) An individual who believes that an employer has discriminated in any manner or taken adverse action against the individual in violation of subsection (a) of this section may submit to the Commissioner a written complaint that alleges the discrimination and that includes the signature of the individual.

(2) An individual shall file a complaint under this subsection within 180 days after the alleged discrimination occurs.

(c) Investigation; opportunity to respond; enjoinment of violation; notice of determination. --

(1) On receipt of a complaint under subsection (b) of this section, the Commissioner may investigate.

(2) The Commissioner shall provide the employer with an opportunity to respond to the allegations in the complaint.

(3) If, after investigation and consideration of any response from the employer, the Commissioner determines that an employer or other person has violated subsection (a) of this section, the Commissioner shall file a complaint to enjoin the violation, to reinstate the employee to the former position with back pay, and to award any other appropriate damages or other relief in the circuit court for:

(i) the county in which the alleged violation occurred;

(ii) the county in which the employer has its principal office; or

(iii) Baltimore City.

(4) Within 120 days after the Commissioner receives a complaint, the Commissioner shall notify the employee of the determination under this subsection.

§ 3-913. Violation by employer engaged in contract work with public body

(a) Notice of citation to public body. -- Where, after investigation, the Commissioner issues a citation for a knowing violation of this subtitle or regulations adopted under this subtitle by an employer engaged in

work on a contract with a public body, the Commissioner shall promptly notify the public body.

(b) Withholding of payment. --

(1) On notification, the public body shall withhold from payment due the employer an amount that is sufficient to:

(i) pay restitution to each employee for the full amount of wages due; and

(ii) pay any benefits, taxes, or other contributions that are required by law to be paid on behalf of the employee.

(2) The public body shall release:

(i) on issuance of a favorable final order of a court or an administrative unit, the full amount of the withheld funds; and

(ii) on an adverse final order of a court or an administrative unit, the balance of the withheld funds after all obligations are satisfied under paragraph (1) of this subsection.

§ 3-914. Records; notice to independent contractor or exempt person

(a) Records. -- An employer shall keep, for at least 3 years, in or about its place of business, records of the employer containing the following information:

(1) the name, address, occupation, and classification of each employee or independent contractor;

(2) the rate of pay of each employee or method of payment for the independent contractor;

(3) the amount that is paid each pay period to each employee or, if applicable, independent contractor;

(4) the hours that each employee or independent contractor works each day and each workweek;

(5) for all individuals who are not classified as employees, evidence that each individual is an exempt person or an independent contractor or its employee; and

(6) other information that the Commissioner requires, by regulation, as necessary to enforce this subtitle.

(b) Notice to independent contractor or exempt person. -- An employer shall provide each individual classified as an independent contractor or exempt person with written notice of the classification of the individual at the time the individual is hired.

(c) Contents of notice. -- The written notice shall:

(1) include an explanation of the implications of the individual's classification as an independent contractor or exempt person rather than as an employee; and

(2) be provided in English and Spanish.

(d) Regulations regarding notice. -- The Commissioner shall adopt regulations establishing the specific requirements for the contents and form of the notice.

(e) Penalty for failure to provide notice. -- If an employer fails to provide notice under subsection (b) of this section, the Commissioner may assess a civil penalty of not more than $ 50 for each day that the employer fails to provide notice.

§ 3-915. Prohibited activities for the purpose of violating this subtitle

(a) Knowing incorporation or formation. -- A person may not knowingly incorporate or form, or assist in the incorporation or formation of, a corporation, partnership, limited liability corporation, or other entity, or pay or collect a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity for the purpose of facilitating, or evading detection of, a violation of this subtitle.

(b) Knowing conspiracy. -- A person may not knowingly conspire with, aid and abet, assist, advise, or facilitate an employer with the intent of violating this subtitle.

(c) Civil penalty; exception. --

(1) Except as provided in paragraph (2) of this subsection, a person that violates this section shall be subject to a civil penalty not exceeding $ 20,000.

(2) A person that violates this section may not be subject to a civil penalty under this section if the person:

(i) holds a professional license as a lawyer or a certified public accountant; and

(ii) was performing an activity in the ordinary course of that person's license when the violation occurred.

(3) If the person is exempt from sanction under paragraph (2) of this subsection, the Commissioner shall promptly refer the person for investigation and possible sanction to the unit of State government that has regulatory jurisdiction over the business activities of that person.

(d) Procedures set forth in §§ 3-905 and 3-906 applicable. -- The procedures governing investigations, citations, and administrative and judicial review of an alleged violation under this section shall be the same as those set forth in §§ 3-905 and 3-906 of this subtitle.

(e) One final order. -- A person may be assessed civil penalties under this section by only one final order of a court or administrative unit for the same actions constituting the violation.

§ 3-916. Groundless or malicious complaint and bad faith actions; administrative penalty; attorneys' fees

(a) Groundless or malicious complaint and bad faith actions prohibited. -- A person may not:

(1) make or cause to be made a groundless or malicious complaint to the Commissioner or an authorized representative of the Commissioner;

(2) in bad faith, bring an action under this subtitle or a proceeding related to the subject of this subtitle; or

(3) in bad faith, testify in an action under this subtitle or a proceeding related to the subject of this subtitle.

(b) Investigation. -- The Commissioner shall investigate any allegations that a person has violated any provision of this section.

(c) Administrative penalty; notice and hearing; disclosure of complainant. --

(1) If the Commissioner determines that a person has violated any provision of this section, that person may be subject to an administrative penalty of up to $ 1,000, assessed by the Commissioner.

(2) A sanction under paragraph (1) of this subsection shall be subject to the notice and hearing requirements of § 3-906 of this subtitle.

(3) If the person found in violation of this section is a person alleged to be employed by the respondent, the Commissioner shall disclose the identity of the complainant.

(d) Attorneys' fees. -- Any person who must defend an action taken as a result of a groundless or malicious complaint may be entitled to recover attorneys' fees.

§ 3-917. Regulations

The Commissioner shall adopt regulations to carry out this subtitle.

§ 3-918. Payment of civil penalty into General Fund

Each civil penalty under this subtitle shall be paid into the General Fund of the State.

§ 3-919. Budget and costs

(a) Appropriation from Workers' Compensation Commission. -- The proposed budget of the Division of Labor and Industry shall include an appropriation from the Workers' Compensation Commission to cover the cost of administering this subtitle.

(b) Administration costs. -- The Workers' Compensation Commission shall pay the cost of administering this subtitle from money that the Commission receives under § 9-316 of this article.

§ 3-920. Annual report

(a) In general. -- The Commissioner shall prepare an annual report for the Secretary and, in accordance with § 2-1257 of the State Government Article, the General Assembly on the administration and enforcement of this subtitle, that shall include:

(1) the number and nature of complaints received;

(2) the number of investigations conducted;

(3) the number of citations issued;

(4) the number of informal resolutions of the citations;

(5) the number of citations appealed to the Office of Administrative Hearings and the outcomes of those hearings;

(6) the number of requests for judicial review of final orders and whether the orders were affirmed or overturned; and

(7) the number of civil penalties assessed, the total dollar amount of those penalties, and the total dollar amount collected.

(b) Public record. -- The Commissioner's report shall be a public record.

Maryland Lien for Unpaid Wages Law

"MLUWL"

Md. Code, Lab. & Empl. Art., §§ 3-1101 – 3-1110

§ 3-1101. Definitions.

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Employer. -- "Employer" includes a person who acts directly or indirectly in the interest of another employer with an employee.

(c) Lien for unpaid wages. -- "Lien for unpaid wages" means a lien for the amount of wages owed to an employee and penalties authorized under this title or other provisions of law against real or personal property owned by an employer and located in the State.

§ 3-1102. Notice required; contents.

To establish a lien for unpaid wages under § 3-1104 of this subtitle, an employee shall first provide written notice to an employer that:

(1) is served on the employer within the statute of limitations period under § 5-101 of the Courts Article;

(2) is personally served in accordance with Maryland Rule 2-121; and

(3) contains the information required by the Commissioner under § 3-1110 of this subtitle to provide the employer with adequate notice of the wages claimed and the property against which the lien for unpaid wages is sought.

§ 3-1103. Disputed claims.

(a) Complaint. -- An employer may dispute a lien for unpaid wages by filing a complaint in the circuit court for the county where property of an employer is located.

(b) Complaint -- Requirements. -- A complaint filed under this section shall:

(1) be filed within 30 days after notice is served on the employer; and

(2) include:

(i) the name of the employer that owes the employee the wages and the name of the employee to whom the wages are owed;

(ii) a copy of the notice to establish a lien for unpaid wages served on the employer under § 3-1102 of this subtitle;

(iii) a statement of any defense to the lien for unpaid wages; and

(iv) an affidavit containing a statement of facts that support any defenses raised.

(c) Hearing. -- The employer or employee may request an evidentiary hearing.

(d) Order establishing lien; burden of proof. -- If an employer files a complaint, the circuit court shall determine whether to issue an order establishing a lien for unpaid wages:

(1) within 45 days after the date on which the complaint was filed; and

(2) based on a preponderance of the evidence in which the employee has the burden of proof to establish the lien for unpaid wages.

(e) Court costs and attorney's fees. --

(1) If a circuit court issues an order to establish a lien for unpaid wages, the employee is entitled to court costs and reasonable attorney's fees.

(2) If a circuit court determines the effort to establish a lien for unpaid wages to have been frivolous or made in bad faith, the court may award court costs and reasonable attorney's fees to an employer

§ 3-1104. Establishing lien.

A lien for unpaid wages is established:

(1) after a circuit court issues an order to establish a lien for unpaid wages; or

(2) if no complaint disputing the lien for unpaid wages is filed, within 30 days after a notice is served under § 3-1102 of this subtitle.

§ 3-1105. Recordation of lien.

(a) Following court order. -- If a circuit court orders the establishment of a lien for unpaid wages, the employee may record the lien for unpaid wages by filing a wage lien statement under subsection (c) of this section.

(b) Following failure to file complaint by employer. -- If the employer fails to file a timely complaint disputing the notice of wage lien, the employee may record the lien for unpaid wages by filing a wage lien statement under subsection (c) of this section along with proof of service in accordance with Maryland Rule 2-126.

(c) Method of recordation. -- A wage lien statement may be recorded:

(1) for a lien against real property, by filing a wage lien statement, in a

form prescribed by the Commissioner, with the clerk of the circuit court for the county where any portion of the property is located; and

(2) for a lien against personal property, by filing a wage lien statement in the same manner, form, and place as a financing statement under Title 9, Subtitle 5 of the Commercial Law Article.

(d) Failure to record; extinguishment of lien. --

(1) If an employee does not record a wage lien statement within 180 days after the lien for unpaid wages is established, a lien for unpaid wages shall be extinguished without prejudice.

(2) If payment is made or a bond is filed for the amount of wages and damages stated in the wage lien statement, the recorded lien for unpaid wages shall be released.

(e) Priority. -- A lien for unpaid wages recorded under this section shall be considered a secured claim that has priority:

(1) from the date of the court order establishing the lien for unpaid wages; or

(2) if no complaint disputing the lien for unpaid wages is filed, from the date that the employee filed the wage lien statement.

(f) Recordation as constructive notice of lien. -- Subsequent bona fide purchasers of any property subject to a recorded lien for unpaid wages are deemed to have constructive notice of the lien for unpaid wages from date of recordation of a wage lien statement.

§ 3-1106. Enforcement.

(a) In general. -- An order for a lien for unpaid wages shall be enforced in the same manner as any other judgment under State law.

(b) Statute of limitations on action to enforce. -- An action to enforce an order for a lien for unpaid wages shall be brought within 12 years of the date of recordation of a lien for unpaid wages.

§ 3-1107. Contract requiring waiver of right prohibited.

(a) In general. -- A contract between an employee and an employer may not waive or require the employee to waive the right to seek the establishment of a lien for unpaid wages under this subtitle.

(b) Contract conditional on payment to employer from third party does not waive right to lien. -- A provision in an executory contract between an employer and an employee that conditions payment of wages to the employee on receipt by the employer of a payment from a property owner or a third party may not abrogate or waive the right

of an employee to seek the establishment of a lien for unpaid wages under this subtitle.

(c) Provision in violation is void. -- A provision of a contract that violates this section is void as against the public policy of the State.

§ 3-1108. Construction of subtitle.

This subtitle may not be construed to prevent an employee from exercising any right or seeking any remedy to which the employee may be otherwise entitled.

§ 3-1109. Commissioner may establish lien.

The Commissioner may seek to establish a lien for unpaid wages on behalf of an employee.

§ 3-1110. Regulations.

The Commissioner shall adopt regulations to:

(1) establish the content of the notice, complaint, and wage lien statement under this subtitle; and

(2) implement the provisions of this subtitle.

Maryland Wage and Hour Regulations

"MWHR"

COMAR, Title 9, Subtitle 12, Chapters 39-41

CHAPTER 39 – LIEN FOR UNPAID WAGES

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Employer Complaint to Dispute Lien for Unpaid Wages" means the complaint filed by an employer in circuit court to dispute a Notice to Employer of Intent to Claim Lien for Unpaid Wages.

(2) "Notice to Employer of Intent to Claim Lien for Unpaid Wages" means the written form or comparable notice that an employee serves on an employer stating the employees intent to claim a lien for unpaid wages.

(3) "Wage Lien Statement" means the form that may be recorded by an employee after a lien for unpaid wages has been established pursuant to Labor and Employment Article, § 3-1104, Annotated Code of Maryland.

.02 Notice of Claim for Unpaid Wages.

A. An employee shall serve his or her employer with a Notice to Employer of Intent to Claim Lien for Unpaid Wages on a form that contains the information specified in § B of this regulation, a sample of which may be found on the Department's website.

B. The form shall include the following:

(1) The name and address of the individual seeking a lien;

(2) The name of the business or individual for whom the employee performed work;

(3) The dates of employment;

(4) The dates for which wages are due but were not paid;

(5) The basis for the claim that wages were due but were not paid;

(6) The monetary amount of the lien sought;

(7) The real or personal property, or both, against which the lien is sought along with a description adequate to identify the property, name of owner, and location; and

(8) Notice to the employer of their right to dispute the lien by filing a complaint within 30 days of receipt of the notice.

C. An employee shall serve the employer by:

(1) Delivering personally a copy of the Notice to Employer of Intent to Claim Lien for Unpaid Wages to the employer;

(2) Leaving a copy of the Notice to Employer of Intent to Claim Lien for Unpaid Wages at the employers home or place of dwelling with a resident of suitable age and discretion; or

(3) Mailing a copy of the Notice to Employer of Intent to Claim Lien for Unpaid Wages to the employer by certified mail requesting, "Restricted Delivery-Show to whom, date, and address of delivery".

.03 Employer Complaint to Dispute Notice to Employer of Intent to Claim Lien for Unpaid Wages.

A. An employer may dispute a lien for unpaid wages by filing a complaint in the circuit court for the county where the property of the employer is located.

B. The complaint disputing a lien for unpaid wages shall include the following:

(1) The date that the employee served the Notice to Employer of Intent to Claim Lien for Unpaid Wages on the employer;

(2) An explanation of why the wages claimed by the employee are not due and owing by the employer;

(3) A description of supporting documents with the supporting documents attached; and

(4) A certificate of service reflecting service upon the employee.

.04 Wage Lien Statement.

A Wage Lien Statement shall include the following:

A. A description of the property;

B. The name of the property owner;

C. The monetary amount of the lien;

D. A copy of the Notice to Employer of Intent to Claim Lien for Unpaid Wages and proof of service of the notice; and

E. A copy of a court order establishing the lien for unpaid wages if the lien for unpaid wages is established in a court.

.05 Recording Lien.

If an employer does not dispute a Notice to Employer of Intent to Claim

Lien for Unpaid Wages or if a court orders the establishment of a lien, an employee may record the Wage Lien Statement together with proof of service.

CHAPTER 40 – WORKPLACE FRAUD

.01 Scope.

This chapter applies to construction services and landscaping services.

.02 Notice.

A. If an employer contracts with an individual and classifies that individual as an independent contractor or an exempt person, the employer shall complete the information required by § A(9) of this regulation and provide the individual with a "Notice to Independent Contractors and Exempt Persons" that contains the following information:

(1) Notification to the individual that they have been hired as an independent contractor or exempt person;

(2) A statement by the employer that the independent contractor will perform the work according to their own means and methods, free from control of the employer in all details connected with the performance of the work, except as to its product and result;

(3) Notification that the individual's classification as an independent contractor or exempt person means the individual will be responsible for all tax obligations, including, but not limited to, the filing of business or self-employment income tax returns with the U.S. Internal Revenue Service;

(4) Notification that the individual's classification as an independent contractor or exempt person means that they are not eligible for protection under protective laws, including, but not limited to, employment discrimination and anti-retaliation laws, occupational safety and health laws, living wage and prevailing wage laws, and wage and hour laws;

(5) Notification that, if the independent contractor or exempt person hires employees to perform work, the independent contractor or exempt person is responsible as an employer for all tax, unemployment insurance, workers' compensation insurance, and labor and employment law obligations on behalf of those employees;

(6) Notification that the independent contractor or exempt person is obligated to provide a "Notice to Independent Contractors and Exempt Persons" for independent contractors or exempt person with whom they contract;

(7) Notification that the individual is required to provide copies of any licenses or registrations issued to the individual related to the work to be performed to the employer;

(8) The name, address, telephone number and email address of the Commissioner of Labor and Industry if the individual has any questions; and

(9) A detailed statement of the work to be performed by the independent contractor or exempt person or the appropriate provisions of the contract between the parties, which shall be attached to the notice.

B. An employer shall use the Commissioner's "Notice to Independent Contractors and Exempt Persons", which is available for download on the Maryland Department of Labor's website.

C. An employer shall post the Commissioner's "Notice to Independent Contractors and Exempt Persons" in English and Spanish in a conspicuous location at places where notices to employees are normally posted at each job site and at the office of the employer.

D. An employer shall retain proof that the independent contractor or exempt person was provided a copy of the "Notice to Independent Contractors and Exempt Persons" with an acknowledgement signed by the individual.

.03 Record Keeping.

A. For each independent contractor and exempt person hired, an employer shall retain the following records at the work site or at its place of business:

(1) A statement with a description of the employer's usual course of business or a fully executed copy of the contract between the employer and the independent contractor or exempt person;

(2) Acknowledgement forms signed by the independent contractor and exempt person; and

(3) Licenses or registrations provided by an individual classified as an independent contractor or exempt person.

B. An employer shall retain each record for 3 years.

.04 Evidence of a Knowing Violation.

A. The Commissioner may consider evidence, as provided in § B of this regulation, that an employer knowingly failed to properly classify an employee.

B. The evidence shall include the following:

(1) Any previous violation of the Workplace Fraud Act or a violation of any other state or federal law that involves similar issues related to the classification of employees;

(2) Refusal or failure of the employer to produce records requested pursuant to Labor and Employment Article, § 3-905(d)(1), Annotated Code of Maryland;

(3) Refusal or failure of the employer to cooperate with an investigation authorized under Labor and Employment Article, § 3-905, Annotated Code of Maryland;

(4) Evidence that the employer classifies differently individuals who perform substantially the same tasks, allowing for the business model described in Labor and Employment Article, § 3-903(c)(3), Annotated Code of Maryland; and

(5) Any other credible evidence of the employer's actual knowledge of, deliberate ignorance of, or reckless disregard for whether or not the worker is misclassified.

.05 Landscaping Illustrations.

A. The illustrations in this regulation provide guidance under the Workplace Fraud Act only and do not apply to any other State or federal law.

B. The illustrations in §§ C--E of this regulation, provide guidance for the landscaping services industry in the application of Labor and Employment Article, § 3-903(c), Annotated Code of Maryland.

C. The JB Landscaping Company (JB) is hired to install the landscaping for a new large housing development. After JB commences work, it determines that it does not have enough employees to complete the job. JB subcontracts some of its work to the Red Company (Red), a smaller landscape company. JB sets the work hours for all workers on the job. Red provides the plants and other necessary tools and equipment for the job. Red maintains its own place of business but does not perform service for more than one person or company at a time. Either JB or Red can end the services at any time. Red pays federal employee taxes. Red is an independent contractor.

D. While working on a large landscaping job with a Friday deadline, the Tree Company (Tree) determines that it needs additional workers to meet that deadline. On Wednesday afternoon, Tree contacts Keith Brown to see if he knows at least five workers who

can report to the landscaping job in the morning. Keith Brown engages five other workers to assist with the Tree job. Tree sets the hours, provides the tools and equipment, and frequently inspects the work during the day. Keith Brown does landscaping work but does not have his own business. Tree pays Keith Brown a lump sum, which he distributes to the other workers. Keith Brown and the five other workers are employees of Tree.

E. The Green Company (Green), a landscaping company, is hired to landscape a building complex. Once the work is underway, the owner of the building complex decides to install a pond with a waterfall. Green does not build ponds and waterfalls so it subcontracts that work to the Water Company (Water). Water is licensed to build ponds with waterfalls, and it carries workers' compensation and liability insurance under the company name. Water performs services for more than one person at a time. All equipment and tools necessary for the pond installation are owned by Green. Because of Water's experience in the area, there is no oversight of the daily work by Green. Water is paid by Green at the completion of the job. However, Green is ultimately responsible for the final product if there are any faults or defects in the construction. Water is an independent contractor.

.06 Construction Illustrations.

A. The illustrations in this regulation provide guidance under the Workplace Fraud Act only and do not apply to any other State or federal law.

B. The illustrations in §§ C--J of this regulation provide guidance for the construction services industry in the application of Labor and Employment Article, § 3-903(c), Annotated Code of Maryland.

C. John Brown has an oral agreement with ACE Building Company (ACE) to do carpentry work on houses in a development designated by ACE. John Brown supplies his own hand tools. ACE supplies the material for each job. He has to do the work himself and he works on a full time basis for the company. For some work he is paid on a piecework basis and for some work he is paid on an hourly basis. He does not have assistants, does not have an office, and does not advertise in newspapers or otherwise hold himself out to the public as being in the carpentry business. ACE can fire him any time before he finishes a job without contractual liability. John Brown is an employee of ACE.

D. HVAC, Inc. (HVAC) is the mechanical subcontractor on a large hospital construction contract. There is so much work to perform

that HVAC contracts with two other companies, Air Supply, Inc. (Air Supply) and Kool and the Gang, Inc. (Kool), to assist with the work. Air Supply and Kool each have their own employees. HVAC retains some supervisory control over the employees of the other companies to make sure that the job is being done to the specifications of the overall mechanical contract. Air Supply and Kool exercise supervision over the installation methods of their respective workforces. Even though the two subcontractors are in the same business as HVAC and they perform the same type of work at the same location as HVAC, there is no employer-employee relationship between the contracting companies, and there is no employee-employer relationship between the subcontractors' employees and HVAC.

E. Sarah Green is a painting subcontractor who has contracted with XYZ General Contracting, Inc. (XYZ) to paint 264 houses. She hired 40 painters to do the work for her, although only about 15 are on the job at any one time. She supplies all the paint, brushes, and ladders. She designates the house to be painted and either pays the painters per house or by the hour. Detailed instructions about the work are not necessary because of the painters' skill in their trade. Sarah Green inspects the work and requires them to repaint any unsatisfactory work. The painters cannot engage helpers without her consent. She can discharge them for any reason, and they are free to resign at any time. The painters assume no business risks and have no capital investment. None of them has an established business. The painters are employees of Sarah Green, not XYZ, and Sarah Green is an independent contractor, not an employee of XYZ.

F. Milton Manning, an experienced tile and terrazzo journeyman, orally agreed with MEGA, Inc. (MEGA) to perform full-time services at construction sites. He uses his own tools and performs services in the order designated by MEGA and according to its specifications. MEGA supplies all materials, makes frequent inspections of his work, pays him on a piecework basis, and carries workers' compensation insurance on him. He does not have a place of business or hold himself out to perform similar services for others. Either party can end the services at any time. Milton Manning is an employee of MEGA.

G. Wallace Black agreed with the Sawdust Company (Sawdust) to supply the construction labor for a group of houses. The company agreed to pay all construction costs. However, Wallace Black supplies all the tools and the equipment. He performs personal services as a carpenter and mechanic for an hourly wage. He also acts as superintendent and foreman, and engages other

individuals to assist him. Sawdust has the right to select, approve, or discharge any helper. A company representative makes frequent inspections of the construction site. When a house is finished, Wallace Black is paid a certain percentage of its costs. He is not responsible for faults, defects of construction, or wasteful operation. At the end of each week, he presents the company with a statement of the amount he has spent, including the payroll. Sawdust gives him a check for that amount from which he pays the assistants, two of whom are day laborers although he is not personally liable for their wages. Wallace Black and all of his assistants are employees of Sawdust.

H. Trisha Gold; Pristine; Painters.

(1) Trisha Gold is a painting contractor who has been subcontracted by Pristine Construction, Inc. (Pristine), the general contractor responsible for painting 20 individual cottages. Prior to entering the contract, Pristine seeks and obtains proof from Trisha Gold of payroll withholdings, payment of unemployment insurance and workers' compensation with respect to Trisha Gold's employees. Pristine also provides Trisha Gold with a written notice of her status as an independent contractor and the rights and obligations pursuant to that status. Per the terms of their written contract, Trisha Gold is to complete ten cottages.

(2) Trisha Gold hires Painters, LLC (Painters) to assist in the completion of this contract. Painters is responsible for delivery of five completed cottages. In order to ensure that the cottages are completed with matching colors, Pristine provides all of the paint. However, Trisha Gold and Painters each provide their own ladders and brushes. Painters work under Trisha Gold's direction and control and she sets the work hours for the job. Trisha Gold inspects Painters' work to ensure satisfactory performance and she is responsible for paying for any repairs for inadequate work. Trisha Gold is an independent contractor of Pristine. Painters' workers are employees of Trisha Gold. Painters and their workers are not employees of Pristine.

I. ABC Company (ABC) hires three crews of workers to do the siding on new houses in a residential development. ABC pays each of the crews per square foot of siding installed. ABC tells each crew leader that they are independent contractors responsible for their own workers' compensation premiums and any taxes. None of the crew leaders appears to have their own business, and they fail to get any workers' compensation coverage. One of the crew leaders is designated as general foreman and has been given total responsibility for running the job, but ABC has a superintendent who periodically walks the site to make sure the work is done

properly. ABC also provides safety equipment for each worker. At the end of each week, ABC pays the crew leaders a lump sum based on the square footage of siding installed. The crew leader then pays each worker based on how much siding they installed. The workers doing the siding are employees of ABC.

J. POP; DIG. POP General Contracting (POP) leases two employees and a backhoe from DIG Excavators, Inc. (DIG). The DIG workers are engaged to open a trench, lay some pipe, and backfill the trench. Both POP and DIG contend that neither of them is the employer of the workers, that for purposes of these lend/lease type jobs, they are independent contractors for POP. None of the workers has his own business or pays his own workers' compensation. The workers always consider DIG to be their employer and if they have questions about how to do the job, they ask their boss at DIG. The workers are employees of DIG, even while they are leased-loaned to POP.

CHAPTER 41 – WAGE AND HOUR LAW

.01 Administrative Capacity.

"Administrative capacity" has the meaning stated in 29 CFR § 541.200 et seq.

.02 Agriculture.

"Agriculture" means work performed by a farmer or on a farm as an incident to or in conjunction with farming operations, such as:

A. The cultivation and tillage of soil, including grading, rock removal, building terraces, irrigation, and fertilization;

B. The production, growing, cultivation, or harvesting of agricultural or horticultural products or commodities;

C. Breeding, fattening, feeding, or the general care of livestock, bees, fur-bearing animals whose fur has marketable value, or poultry, including poultry hatchery operations;

D. Dairying, including:

(1) Caring for and milking of milk-giving animals,

(2) Containing, cooling, and storage of milk when done on the farm, and

(3) Farm-based manufacturing operations directly and closely related to dairying, such as separating cream or making butter;

E. Farming activities on experimental farms or nurseries, or in greenhouses or mushroom cellars; or

F. Duties directly and closely related to farming operations, including the:

(1) Preparation of products or commodities for market, or

(2) Delivery of products or commodities to storage, market, or carriers for transportation to market.

.03 Complaints.

Before the Commissioner of Labor and Industry initiates an investigation, the Commissioner may require the employee to submit a written complaint.

.04 Directly and Closely Related.

"Directly and closely related" has the meaning stated in 29 CFR § 541.703 et seq.

.05 Executive Capacity.

"Executive capacity" has the meaning stated in 29 CFR § 541.100 et seq.

.06 First Processing.

A. "First processing" means the procedure by which the form of a product or commodity is changed from its original state.

B. "First processing" does not refer to an employer who acts as a wholesaler, broker, factor, or other middleman in the chain from producer to consumer.

.07 Food and Drink Establishment.

A. "Annual gross income":

(1) Means the total of all receipts from all sales made during the preceding four calendar quarters; and

(2) Is the sole basis for determining the annual gross income for all subsequent quarters.

B. "Cafe" means a combination of a restaurant and a tavern.

C. "Drive-in" means an establishment:

(1) Which sells prepared food items for consumption on the premises or in the purchaser's car;

(2) Which is characterized by a parking lot adjacent to the establishment; and

(3) To which purchasers generally drive to consummate a purchase.

D. "Restaurant" means an establishment which:

(1) Is primarily engaged in selling and serving prepared food and beverages for consumption on the premises;

(2) Provides characteristic employee services and dining facilities; and

(3) Contains physical and functional equipment and facilities required for the consumption of a meal.

E. "Similar establishment" means an establishment which has the characteristics of a restaurant, drive-in, tavern, or cafe.

F. "Tavern" means an establishment whose primary sales consist of alcoholic beverages for consumption on the premises on a drink-by-drink basis.

.08 Gasoline Service Station.

A. "Gasoline service station" means an establishment primarily engaged in selling gasoline and lubricating oils to the general public.

B. A gasoline service station may be part of a larger enterprise which also repairs automobiles.

C. An establishment which derives the greater part of its net income from the sale of goods other than gasoline, lubricating oils, and related services is not a gasoline service station.

.09 Hotel or Motel.

A. "Hotel" or "motel" for purposes of Labor and Employment Article, § 3-415, Annotated Code of Maryland, means an establishment engaged primarily in providing lodging or lodging and meals to the general public.

B. "Hotel" or "motel" includes an apartment or residential establishment that derives more than half of its annual gross income from providing transient guests with lodging or lodging and meals.

C. "Hotel" or "motel" does not mean an establishment whose income is derived primarily from providing bedroom and kitchen facilities for leased periods of longer than 3 months.

.10 Hours of Work.

A. "Hours of work" means the time during a workweek that an individual employed by an employer is required by the employer to be on the employer's premises, on duty, or at a prescribed workplace.

B. Meal periods are included in computing hours of work if the individual is required to perform any duties during the meal period.

C. Travel time is included in computing hours of work if the individual:

(1) Travels during regular work hours;

(2) Travels from one worksite to another; or

(3) Is called out after work hours in emergency situations.

.11 Immediate Family.

A. "Immediate family" means an employer's parent, spouse, child, brother, sister, grandchild, or grandparent who:

(1) Resides with the employer; and

(2) Enjoys the same privileges as other members of the family.

B. "Immediate family" does not include anyone living outside the employer's household, except the employer's parent, spouse, or child.

C. "Child" means a natural child, adopted child, or stepchild but does not mean the spouse of that child.

.12 Mechanic.

A. "Mechanic" means an employee whose primary function is to put automobiles, trailers, trucks, or farm machinery in working order by making necessary repairs or adjustments.

B. The following employees are not mechanics:

(1) An employee whose primary duty is to wash, clean, polish, lubricate packing wheel bearings, change oil or oil filters, change tires, paint, perform carpentry, dispatch, or install or repair seat covers;

(2) An employee whose primary duty is to record a vehicle's condition or to write a report detailing necessary parts and mechanical work.

.13 Outside Salesman.

"Outside salesman" has the meaning stated in 29 CFR § 541.500 et seq.

.14 Overtime Compensation.

A. An employee subject to the Minimum Wage Act of Maryland shall be paid overtime compensation for each hour worked in excess of 40 hours per workweek. This includes the following:

(1) All hours worked by an employee for an employer are included, even though the employee may perform work in two or more unrelated jobs;

(2) If the total workweek hours do not exceed 40, an employee is not entitled to overtime compensation for hours worked in excess of 8 on any day, including Saturday, Sunday, and holidays.

B. Compensation for hours worked in excess of 40 hours per workweek is computed at 1-1/2 times the regular hourly rate at which the employee is employed. This includes the following:

(1) The regular hourly rate may not be less than the statutory minimum;

(2) If the employee's regular hourly rate is higher than the statutory minimum, overtime compensation is computed at 1-1/2 times the higher rate.

.15 Packing.

"Packing" means the physical operation by which a product or commodity is placed in a container which is then closed and sealed.

.16 Partsman.

A. "Partsman" means an employee whose primary function is to:

(1) Sell or dispense parts for automobiles, trailers, trucks, or farm machinery; or

(2) Requisition, stock, or dispense those parts for an establishment's mechanical service department.

B. A partsman's duties may include incidental clerical or cleaning work necessary to keep stockrooms, bins, and shelves in order.

.17 Professional Capacity.

"Professional capacity" has the meaning stated in 29 CFR § 541.300 et seq.

.18 Reasonable Cost.

A. The reasonable cost of board, lodging, or other facilities may be included as part of an employee's wage if the:

(1) Facilities are customarily and regularly available to all similarly situated employees;

(2) Employee's acceptance of the facility is voluntary and uncoerced; and

(3) Employee receives the benefits of the facility for which he or she is charged.

B. The reasonable cost of board, lodging, or other facilities included as part of the wage paid to an employee may not:

(1) Exceed the actual cost to the employer; and

(2) Include profit to the employer or to any person or establishment affiliated with the employer.

C. The reasonable cost of furnishing board, lodging, or other facilities may include the cost of operation and maintenance.

D. The employer shall demonstrate the actual cost of the board, lodging, or facilities furnished.

E. In a food and drink establishment, if the actual cost of food consumed by an employee cannot be determined, the reasonable cost is half the price customarily and regularly charged a member of the general public.

F. The cost of furnishing board, lodging, or other facilities primarily for the benefit or convenience of the employer may not be included as part of an employee's wage.

.19 Regular Hourly Rate.

A. "Regular hourly rate" means the usual hourly rate.

B. The regular hourly rate is determined by dividing the total compensation for employment in any workweek by the total number of hours worked in that workweek.

C. Any commission or bonus, if:

(1) Paid weekly, is added to the employee's total compensation in order to determine the regular hourly rate;

(2) Paid other than weekly, is allocated to the particular workweek in which it was earned; or

(3) Allocation is not practical, may be apportioned in equal amounts to each workweek during the period in which it was earned.

D. Gratuities and Tips.

(1) Compensation derived from tips in accordance with Labor and Employment Article, § 3-419, Annotated Code of Maryland, is allocated to the particular workweek in which the employee is a tipped employee.

(2) A compulsory monetary charge for service, even if retained by the employee, is not a tip.

(3) A tipped employees wages must equal at least the minimum wage when direct wages and tips are combined.

(4) A tipped employee who spends more than 20 percent of the employees work time performing non-tip producing duties directly related to their tipped occupation shall be paid by the employer at least the minimum wage for that time.

E. The following amounts are not included in determining the regular hourly rate:

(1) Sums paid as a gift or reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency;

(2) Payments for occasional periods when no work is performed, such as vacation, sick leave, holidays, or jury duty;

(3) Payments for reimbursement purposes, such as travel, equipment, or meal expenses;

(4) Payments made in recognition of services if the payment is:

(a) Within the sole discretion of the employer and not pursuant to any agreement, or

(b) Made pursuant to a bona fide profit-sharing trust, savings, or thrift plan;

(5) Contributions irrevocably made by an employer to a trustee or third person under a bona fide retirement, insurance, or similar employee benefit plan;

(6) Extra compensation paid at a premium rate pursuant to a statutorily valid employer-employee agreement; and

(7) Tips received by the employee in excess of the tip credit.

.20 Restaurant Tip Credit Wage Statement.

A. Definitions.

(1) In this regulation, the following terms have the meanings indicated.

(2) Terms Defined.

(a) "Reported tips" means tips retained by the employee and disclosed to the employer, tips distributed to the employee by the employer, or tips obtained through a valid tip pooling arrangement or tip sharing arrangement.

(b) "Restaurant" has the meaning stated in Regulation .07D of this chapter.

(c) "Tip credit wage statement" means a written or electronic statement that shows the employees effective hourly rate of pay, including employer paid cash wages plus all reported tips, for all tip credit hours worked for each workweek in the pay period.

B. No later than 2 weeks following the end of the pay period, a restaurant employer shall provide each employee for whom the employer utilizes a tip credit with a tip credit wage statement for each pay period that reflects all reported tips for tip credit hours for each workweek of the pay period.

C. A restaurant employer may satisfy the requirement in § B of this regulation by providing an online system through which an employee may obtain the employees tip credit wage statement.

.21 Salesman.

A. "Salesman" for purposes of Labor and Employment Article, § 3-415, Annotated Code of Maryland, means an employee whose primary duty is to sell or obtain orders or contracts for the sale of automobiles, trailers, trucks, or farm machinery.

B. The sales work may be performed in the establishment or elsewhere.

C. A salesman may perform work incidental to and in conjunction with the employee's regular sales or solicitations, including incidental deliveries and collections.

.22 Work-Study Programs.

A. Definitions.

(1) A "work-study program" is a program in which the period of normal public or private school attendance is divided between school attendance and employment in industry or business.

(2) A "work-study coordinator" is the individual assigned to supervise or administer a work-study program.

B. Application.

(1) Upon application by a work-study coordinator, the Commissioner may authorize payment to a student of an hourly rate less than the statutory minimum.

(2) The application shall state the:

(a) Title of the work-study coordinator;

(b) Name and address of the school attended by the student;

(c) Name and address of the student;

(d) Name and address of the employer;

(e) Type of work to be performed by the student;

(f) Hourly rate to be paid; and

(g) Duration of time that the student will be paid less than the statutory minimum.

(3) The employer and the work-study coordinator shall sign the application.

C. The work-study coordinator shall:

(1) Obtain, through his or her efforts, all work-study program employment opportunities;

(2) Supervise, on a continuing basis, the progress of each student in a work-study program; and

(3) Notify the Commissioner upon termination of a student's employment in the job designated on the application.

.23 Workweek.

"Workweek" means a fixed and regularly recurring period of 168 consecutive hours beginning on any hour of the day.

.24 Computer-Related Occupations: Exemptions from Minimum Wage and Overtime Compensation.

A computer systems analyst, computer programmer, software engineer, or other similarly skilled professional employee in the computer field is eligible for classification as an employee in a professional capacity if the employee meets the standard set forth in 29 CFR § 541.400 et seq.

Fair Labor Standards Act

"FLSA"

29 U.S.C. §§ 201 - 219

§ 201. Short title

This Act may be cited as the "Fair Labor Standards Act of 1938."

§ 202. Congressional finding and declaration of policy

(a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce. That Congress further finds that the employment of persons in domestic service in households affects commerce.

(b) It is hereby declared to be the policy of this Act [29 USCS §§ 201 et seq., generally; for full classification, consult USCS Tables volumes], through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

§ 203. Definitions

As used in this Act—

(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, United States Code),

(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) [in] the Government Printing Office [Government Publishing Office];

(B) any individual employed by the United States Postal Service or the Postal Rate Commission [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), 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 15(g) of the Agricultural Marketing Act, as amended, 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 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 Act 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 Chief of the Children's Bureau in the Department of Labor [Secretary] 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 Chief of the Children's Bureau [Secretary] certifying that such person is above the oppressive child-labor age. The Chief of the Children's Bureau [Secretary] 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 Chief of the Children's Bureau [Secretary] 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)

(1) "Wage" paid to any employee includes the reasonable cost, as

determined by the Administrator [Secretary], 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.

(2)

(A) 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—

(i) 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 the date of the enactment of this paragraph [enacted August 20, 1996]; and

(ii) an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in clause (i) and the wage in effect under section 6(a)(1) [29 USCS § 206(a)(1)].

(B) An employer may not keep tips received by its employees for any purposes, including allowing managers or supervisors to keep any portion of employees' tips, regardless of whether or not the employer takes a tip credit.

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 6 and 7 [29 USCS §§ 206 and 207] 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 Rate Commission [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.

§ 204. Administration

(a) Creation of Wage and Hour Division in Department of Labor; Administrator. There is hereby created in the Department of Labor a Wage and Hour Division which shall be under the direction of an Administrator [Secretary], to be known as the Administrator [Secretary] of the Wage and Hour Division (in this Act referred to as the "Administrator" ["Secretary"]). The Administrator [Secretary] shall be appointed by the President, by and with the advice and consent of the Senate[, and shall receive compensation at the rate of $10,000 a year].

(b) Appointment, selection, classification, and promotion of employees by Administrator. The Administrator [Secretary] may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the Classification Act of 1923, as amended [5 USCS §§ 5101 et seq. and 5331 et seq.]. The Administrator [Secretary] 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 [Secretary] 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 [Secretary], 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 [Secretary] 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 Administrator [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 Act 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 Act, 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 14(b) [29 USCS § 214(b)].

(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 13 of this Act [29 USCS § 213], 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 14 of this Act [29 USCS § 214].

(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 Act 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 Act 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 Act with respect to such individuals. Notwithstanding any other provision of this Act, or any other law, the Civil Service Commission [Director of the Office of Personnel Management] is authorized to administer the provisions of this Act 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 Rate Commission [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 16(b) of this Act [29 USCS § 216(b)].

§ 205. [Repealed]

§ 206. Minimum wage

(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees. Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

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

(A) $5.85 an hour, beginning on the 60th day after the date of enactment of the Fair Minimum Wage Act of 2007 [enacted 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 [Secretary], 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 rates; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;

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

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

(b) Additional applicability to employees pursuant to subsequent amendatory provisions. Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) 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 Act by the Fair Labor Standards Amendments of 1966 [29 USCS §§ 203, 206, 207, 213, 214, 216, 218, 255], title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1).

(c) [Deleted]

(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 Act [29 USCS §§ 201 et seq., generally; for full classification, consult USCS Tables volumes].

(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, or 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 13 of this Act [29 USCS § 213] (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 the Service Contract Act of 1965 (41 USC 351–357) [41 USCS §§ 6701 et seq.] 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 13 of this Act [29 USCS § 213] (except subsections (a)(1) and (f) thereof) and the provisions of the Service Contract Act of 1965 [41 USCS §§ 6701 et seq.], 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), 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 section 6(b) [subsec. (b) this section] unless such employee's compensation for such service would not because of section 209(a)(6) of the Social Security Act [42 USCS § 409(a)(6)] constitute wages for the purposes of title II of such Act [42 USCS §§ 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 section 6(b) [subsec. (b) this section].

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

(1) In lieu of the rate prescribed by subsection (a)(1), 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) In lieu of the rate prescribed by subsection (a)(1), the Governor of Puerto Rico, subject to the approval of the Financial Oversight and Management Board established pursuant to section 101 of the Puerto Rico Oversight, Management, and Economic Stability Act [48 USCS § 2121], may designate a time period not to exceed four years during which employers in Puerto Rico may pay employees who are initially employed after the date of enactment of such Act [enacted June 30, 2016] a wage which is not less than the wage described in paragraph (1). Notwithstanding the time period designated, such wage shall not continue in effect after such Board terminates in accordance with section 209 of such Act [48 USCS § 2149].

(3) 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) or (2).

(4) Any employer who violates this subsection shall be considered to have violated section 15(a)(3) (29 U.S.C. 215(a)(3)).

(5) This subsection shall only apply to an employee who has not attained the age of 20 years, except in the case of the wage applicable in Puerto Rico, 25 years, until such time as the Board described in paragraph (2) terminates in accordance with section 209 of the Act [48 USCS § 2149] described in such paragraph.

§ 207. Maximum hours

(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 Act [29 USCS §§ 201 et seq.] 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 [effective Feb. 1, 1967],

(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) 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) 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 work-week at a rate not less than one and one-half times the minimum wage rate applicable to him under section 6 [29 USCS § 206],

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]

(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 [sums] 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 [Secretary] 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 [Secretary]) 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) 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)[)], 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) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) 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 6 [29 USCS § 206(a) or (b)] (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) 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 non-overtime 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 [Secretary] 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) 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) Credit toward minimum wage or overtime compensation of amounts excluded from regular rate.

(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 [29 USCS § 206] or overtime compensation required under this section.

(2) Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (e) 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) by employing any employee at 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 6 [29 USCS § 206], 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) 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) 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) [29 USCS § 213 note] 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).

(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) 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) 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 [.]

(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) 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) 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) Reasonable break time for nursing mothers.

(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.

§ 208. [Repealed]

§ 209. Attendance of witnesses

For the purpose of any hearing or investigation provided for in this Act [29 USCS §§ 201 et seq., generally; for full classification, consult USCS Tables volumes], the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16 [26], 1914, as amended (U. S. C., 1934 edition, title 15, secs. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Administrator, the Chief of the Children's Bureau [Secretary of Labor], and the industry committees.

§ 210. Court review of wage orders in Puerto Rico and the Virgin Islands

(a) Any person aggrieved by an order of the Secretary issued under section 8 [29 USCS § 208] may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify (including provision for the payment of an appropriate minimum wage rate), or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceedings before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall

file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Administrator's [Secretary's] order. The court shall not grant any stay of the order unless the person complaining of such order shall file in court an undertaking with a surety or sureties satisfactory to the court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually received while such stay is in effect.

§ 211. Collection of data

(a) Investigations and inspections. The Administrator [Secretary] 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 Act [29 USCS §§ 201 et seq., generally; for full classification, consult USCS Tables volumes], 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 Act [29 USCS §§ 201 et seq., generally; for full classification, consult USCS Tables volumes], or which may aid in the enforcement of the provisions of this Act [29 USCS §§ 201 et seq., generally; for full classification, consult USCS Tables volumes]. Except as provided in section 12 [29 USCS § 212] and in subsection (b) of this section, the Administrator [Secretary] 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 12 [29 USCS § 212], the Administrator [Secretary] shall bring all actions under section 17 [29 USCS § 217] to restrain violations of this Act.

(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 Chief of the Children's Bureau [Secretary] may, for the purpose of carrying out their respective functions and duties under this Act, 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 Act or of any order issued under this Act 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 [Secretary] as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section 7(p)(3) [29 USCS § 207(p)(3)] may not be required under this subsection to keep a record of the hours of the substitute work.

(d) Homework regulations. The Administrator [Secretary] 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 Act, and all existing regulations or orders of the Administrator [Secretary] relating to industrial homework are hereby continued in full force and effect.

§ 212. Child labor provisions

(a) Restrictions on shipment of goods; prosecution; conviction. No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: Provided, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: And provided further, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

(b) Investigations and inspections. The Chief of the Children's Bureau in the Department of Labor [Secretary of Labor], or any of his authorized representatives, shall make all investigations and inspections under section 11(a) [29 USCS § 211(a)] with respect to the employment of minors, and, subject to the direction and control of the Attorney General, shall bring all actions under section 17 [29 USCS § 217] to enjoin any act

or practice which is unlawful by reason of the existence of oppressive child labor, and shall administer all other provisions of this Act relating to oppressive child labor.

(c) Oppressive child labor. No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.

(d) Proof of age. In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age.

§ 213. Exemptions

(a) Minimum wage and maximum hour requirements. The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection) and 7 [29 USCS §§ 206, 207] shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act [5 USCS §§ 551 et seq.] except that [that] an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) [Repealed]

(3) any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than $33^{1}/_{3}$ per centum of its average receipts for the other six months of such year, except that the exemption from sections 6 and 7 [29 USCS §§ 206 and 207] provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 6 [29 USCS § 206], a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on

land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture; or

(4) [Repealed]

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agriculture labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempt by regulations, order, or certificate of the Secretary issued under section 14 [29 USCS § 214]; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) [Repealed]

(10) any switchboard operator employed by an independently owned

public telephone company which has not more than seven hundred and fifty stations; or

(11) [Repealed]

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13), (14) [Repealed]

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary); or

(16) a criminal investigator who is paid availability pay under section 5545a of title 5, United States Code; or

(17) any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is—

(A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and

who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than $27.63 an hour; or

(18) any employee who is a border patrol agent, as defined in section 5550(a) of title 5, United States Code; or

(19) any employee employed to play baseball who is compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season (but not spring training or the off season) at a rate that is not less than a weekly salary equal to the minimum wage under section 6(a) [29 USCS § 206(a)] for a workweek of 40 hours, irrespective of

the number of hours the employee devotes to baseball related activities.

(b) Maximum hour requirements. The provisions of section 7 [29 USCS § 207] shall not apply with respect to—

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935 [49 USCS § 31502]; or

(2) any employee of an employer engaged in the operation of a rail carrier subject to part A of subtitle IV of title 49, United States Code [49 USCS §§ 10101 et seq.]; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 USCS §§ 181–188]; or

(4) [Repealed]

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(6) any employee employed as a seaman; or

(7), (8) [Repealed]

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(10)

(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or

(11) any employee employed as a driver or driver's helper making local

deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 7(a) [29 USCS § 207(a)]; or

(12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year; or

(13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 6(a)(1) [29 USCS § 206(a)(1)]; or

(14) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations; or

(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or

(16) any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or

(17) any driver employed by an employer engaged in the business of operating taxicabs; or

(18), (19) [Repealed]

(20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions),

if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or

(21) any employee who is employed in domestic service in a household and who resides in such household; or

(22), (23) [Repealed]

(24) any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children—

(A) who are orphans or one of whose natural parents is deceased, or

(B) who are enrolled in such institution and reside in residential facilities of the institution,

while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

(25), (26) [Repealed]

(27) any employee employed by an establishment which is a motion picture theater; or

(28) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

(29) any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee (A) is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and (B) receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

(30) a criminal investigator who is paid availability pay under section 5545a of title 5, United States Code.

(c) Child labor requirements.

(1) Except as provided in paragraph (2) or (4), the provisions of section 12 [29 USCS § 212] relating to child labor shall not apply to

any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of section 13(a)(6)(A) [subsec. (a)(6)(A) of this section]) required to be paid at the wage rate prescribed by section 6(a)(5),

(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

(2) The provisions of section 12 [29 USCS § 212] relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 12 [29 USCS § 212] relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(4)

(A) An employer or group of employers may apply to the Secretary for a waiver of the application of section 12 [29 USCS § 212] to the employment for not more than eight weeks in any calendar year of individuals who are less than twelve years of age, but not less than ten years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that—

(i) the crop to be harvested is one with a particularly short harvesting season and the application of section 12 [29 USCS § 212] would cause severe economic disruption in the industry of the employer or group of

employers applying for the waiver;

(ii) the employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;

(iii) the level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) individuals age twelve and above are not available for such employment; and

(v) the industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that—

(i) the individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) such individuals be employed under such waiver (I) for not more than eight weeks between June 1 and October 15 of any calendar year, and (II) in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(5)

(A) In the administration and enforcement of the child labor provisions of this Act [29 USCS §§ 201 et seq.], employees who are 16 and 17 years of age shall be permitted to load materials into, but not operate or unload materials from, scrap paper balers and paper box compactors—

(i) that are safe for 16- and 17-year-old employees loading the scrap paper balers or paper box compactors; and

(ii) that cannot be operated while being loaded.

(B) For purposes of subparagraph (A), scrap paper balers and paper box compactors shall be considered safe for 16- or 17-year-old employees to load only if—

(i)

(I) the scrap paper balers and paper box compactors meet the American National Standards Institute's Standard ANSI Z245.5-1990 for scrap paper balers and Standard ANSI Z245.2-1992 for paper box compactors; or

(II) the scrap paper balers and paper box compactors meet an applicable standard that is adopted by the American National Standards Institute after the date of enactment of this paragraph and that is certified by the Secretary to be at least as protective of the safety of minors as the standard described in subclause (I);

(ii) the scrap paper balers and paper box compactors include an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older;

(iii) the on-off switch of the scrap paper balers and paper box compactors is maintained in an off position when the scrap paper balers and paper box compactors are not in operation; and

(iv) the employer of 16- and 17-year-old employees provides notice, and posts a notice, on the scrap paper balers and paper box compactors stating that—

(I) the scrap paper balers and paper box compactors meet the applicable standard described in clause (i);

(II) 16- and 17-year-old employees may only load the scrap paper balers and paper box compactors; and

(III) any employee under the age of 18 may not operate or unload the scrap paper balers and paper box compactors.

The Secretary shall publish in the Federal Register a standard that is adopted by the American National Standards Institute for scrap paper balers or paper box compactors and certified by the Secretary to be protective of the safety of minors under clause (i)(II).

(C)

(i) Employers shall prepare and submit to the Secretary reports—

(I) on any injury to an employee under the age of 18 that requires medical treatment (other than first aid) resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor; and

(II) on any fatality of an employee under the age of 18 resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor.

(ii) The reports described in clause (i) shall be used by the Secretary to determine whether or not the implementation of subparagraph (A) has had any effect on the safety of children.

(iii) The reports described in clause (i) shall provide—

(I) the name, telephone number, and address of the employer and the address of the place of employment where the incident occurred;

(II) the name, telephone number, and address of the employee who suffered an injury or death as a result of the incident;

(III) the date of the incident;

(IV) a description of the injury and a narrative describing how the incident occurred; and

(V) the name of the manufacturer and the model number of the scrap paper baler or paper box compactor involved in the incident.

(iv) The reports described in clause (i) shall be submitted to the Secretary promptly, but not later than 10 days after the date on which an incident relating to an injury or death occurred.

(v) The Secretary may not rely solely on the reports described in clause (i) as the basis for making a determination that any of the employers described in clause (i) has violated a provision of section 12 [29 USCS § 212] relating to oppressive child labor or a regulation or order issued pursuant to section 12 [29 USCS § 212]. The Secretary shall, prior to making such a determination, conduct an investigation and inspection in accordance with section 12(b) [29 USCS § 212(b)].

(vi) The reporting requirements of this subparagraph shall expire 2 years after the date of enactment of this subparagraph [enacted August 6, 1996].

(6) In the administration and enforcement of the child labor provisions of this Act [29 USCS §§ 201 et seq.], employees who are under 17 years of age may not drive automobiles or trucks on public roadways. Employees who are 17 years of age may drive automobiles or trucks on public roadways only if—

(A) such driving is restricted to daylight hours;

(B) the employee holds a State license valid for the type of driving involved in the job performed and has no records of any moving violation at the time of hire;

(C) the employee has successfully completed a State approved driver education course;

(D) the automobile or truck is equipped with a seat belt for the driver and any passengers and the employee's employer has instructed the employee that the seat belts must be used when driving the automobile or truck;

(E) the automobile or truck does not exceed 6,000 pounds of gross vehicle weight;

(F) such driving does not involve—

(i) the towing of vehicles;

(ii) route deliveries or route sales;

(iii) the transportation for hire of property, goods, or passengers;

(iv) urgent, time-sensitive deliveries;

(v) more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the employee's employer to a customer (other than urgent, time-sensitive deliveries);

(vi) more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than employees of the employer);

(vii) transporting more than three passengers (including employees of the employer); or

(viii) driving beyond a 30 mile radius from the employee's place of employment; and

(G) such driving is only occasional and incidental to the employee's employment.

For purposes of subparagraph (G), the term "occasional and incidental" is no more than one-third of an employee's worktime in any workday and no more than 20 percent of an employee's worktime in any workweek.

(7)

(A)

(i) Subject to subparagraph (B), in the administration and enforcement of the child labor provisions of this Act [29 USCS §§ 201 et seq.], it shall not be considered oppressive child labor for a new entrant into the workforce to be employed inside or outside places of business where machinery is used to process wood products.

(ii) In this paragraph, the term "new entrant into the workforce" means an individual who—

(I) is under the age of 18 and at least the age of 14, and

(II) by statute or judicial order is exempt from compulsory school attendance beyond the eighth grade.

(B) The employment of a new entrant into the workforce under subparagraph (A) shall be permitted—

(i) if the entrant is supervised by an adult relative of the entrant or is supervised by an adult member of the same religious sect or division as the entrant;

(ii) if the entrant does not operate or assist in the operation of power-driven woodworking machines;

(iii) if the entrant is protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation; and

(iv) if the entrant is required to use personal protective equipment to prevent exposure to excessive levels of noise and saw dust.

(d) Delivery of newspapers and wreathmaking. The provisions of sections 6, 7 and 12 [29 USCS §§ 206, 207, and 212] shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homeworker engaged in the making of wreaths

composed primarily of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

(e) Maximum hour requirements and minimum wage employees. The provisions of section 7 [29 USCS § 207] shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 6(a)(3), except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 7 [29 USCS § 207] if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 6(a)(3), that economic conditions warrant such action.

(f) Employment in foreign countries and certain United States territories. The provisions of sections 6, 7, 11, and 12 [29 USCS §§ 206, 207, 211, 212] shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462) [43 USCS §§ 1331 et seq.]; American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(g) Certain employment in retail or service establishments, agriculture. The exemption from section 6 [29 USCS § 206] provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated).

(h) Maximum hour requirement; fourteen workweek limitation. The provisions of section 7 [29 USCS § 207] shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

(1) is employed by such employer—

(A) exclusively to provide services necessary and incidental

to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; 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.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 7 [29 USCS § 207].

(i) Cotton ginning. The provisions of section 7 [29 USCS § 207] shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) 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. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

(j) Processing of sugar beets, sugar beet molasses, or sugar cane. The provisions of section 7 [29 USCS § 207] shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who—

(1) is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup; and

(2) receives for any such employment during such workweeks—

(A) in excess of ten hours in any workday, and

(B) 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. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

§ 214. Employment under special certificates

(a) Learners, apprentices, messengers. The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 6 [29 USCS § 206] and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

(b) Students.

(1)

(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 [29 USCS § 206] or not less than $1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total hours of employment of all employees in such establishment may not exceed—

(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this Act before the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater;

(ii) in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments,

(II) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater; or

(iii) in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in (I) similar establishments of the same employer in the same general metropolitan area in which such establishment is located, (II) similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or (III) other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term "student hours of employment" means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 6(a)(5) [29 USCS § 206(a)(5)] or not less than $1.30 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 6 [29 USCS § 206] or not less than $1.60 an hour, whichever is the higher, of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

(4)

(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

(B) If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed six, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed six—

(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection, and

(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate.

(D) To minimize paperwork for, and to encourage, small businesses to employ students under special certificates issued under paragraphs (1) and (2), the Secretary shall, by

regulation or order, prescribe a simplified application form to be used by employers in applying for such a certificate for the employment of not more than six full-time students. Such an application shall require only—

(i) a listing of the name, address, and business of the applicant employer,

(ii) a listing of the date the applicant began business, and

(iii) the certification that the employment of such full-time students will not reduce the full-time employment opportunities of persons other than persons employed under special certificates.

(c) Handicapped workers.

(1) The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are—

(A) lower than the minimum wage applicable under section 6 [29 USCS § 206],

(B) commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and

(C) related to the individual's productivity.

(2) The Secretary shall not issue a certificate under paragraph (1) unless the employer provides written assurances to the Secretary that—

(A) in the case of individuals paid on an hourly rate basis, wages paid in accordance with paragraph (1) will be reviewed by the employer at periodic intervals at least once every six months, and

(B) wages paid in accordance with paragraph (1) will be adjusted by the employer at periodic intervals, at least once each year, to reflect changes in the prevailing wage paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.

(3) Notwithstanding paragraph (1), no employer shall be permitted to reduce the hourly wage rate prescribed by certificate under this subsection in effect on June 1, 1986, of any handicapped individual

for a period of two years from such date without prior authorization of the Secretary.

(4) Nothing in this subsection shall be construed to prohibit an employer from maintaining or establishing work activities centers to provide therapeutic activities for handicapped clients.

(5)

(A) Notwithstanding any other provision of this subsection, any employee receiving a special minimum wage at a rate specified pursuant to this subsection or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. An employee or the employee's parent or guardian may file such a petition for and in behalf of the employee or in behalf of the employee and other employees similarly situated. No employee may be a party to any such action unless the employee or the employee's parent or guardian gives consent in writing to become such a party and such consent is filed with the Secretary.

(B) Upon receipt of a petition filed in accordance with subparagraph (A), the Secretary within ten days shall assign the petition to an administrative law judge appointed pursuant to section 3105 of title 5, United States Code. The administrative law judge shall conduct a hearing on the record in accordance with section 554 of title 5, United States Code, with respect to such petition within thirty days after assignment.

(C) In any such proceeding, the employer shall have the burden of demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

(D) In determining whether any special minimum wage rate is justified pursuant to subparagraph (C), the administrative law judge shall consider—

(i) the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured; and

(ii) the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity.

(E) The administrative law judge shall issue a decision within thirty days after the hearing provided for in subparagraph (B). Such action shall be deemed to be a final agency action unless within thirty days the Secretary grants a request to

review the decision of the administrative law judge. Either the petitioner or the employer may request review by the Secretary within fifteen days of the date of issuance of the decision by the administrative law judge.

(F) The Secretary, within thirty days after receiving a request for review, shall review the record and either adopt the decision of the administrative law judge or issue exceptions. The decision of the administrative law judge, together with any exceptions, shall be deemed to be a final agency action.

(G) A final agency action shall be subject to judicial review pursuant to chapter 7 of title 5, United States Code [5 USCS §§ 701 et seq.]. An action seeking such review shall be brought within thirty days of a final agency action described in subparagraph (F).

(d) Employment by schools. The Secretary may by regulation or order provide that sections 6 and 7 [29 USCS §§ 206 and 207] shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws.

§ 215. Prohibited acts; prima facie evidence

(a) After the expiration of one hundred and twenty days from the date of enactment of this Act [enacted June 25, 1938], it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7 [29 USCS § 206 or 207], or in violation of any regulation or order of the Administrator [Secretary] issued under section 14 [29 USCS § 214]; except that no provisions of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation; and except that any such transportation, offer, shipment, delivery, or sale of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer that the goods were produced in compliance with the requirements of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed unlawful. [;]

(2) to violate any of the provisions of section 6 or section 7 [29 USCS § 206 or 207], or any of the provisions of any regulation or order of the Administrator [Secretary] issued under section 14 [29 USCS § 214];

(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act [29 USCS §§ 201 et seq., generally; for full classification, consult USCS Tables volumes], or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee. [;]

(4) to violate any of the provisions of section 12 [29 USCS § 212];

(5) to violate any of the provisions of section 11(c) [29 USCS § 211(c)] or any regulation or order made or continued in effect under the provisions of section 11(d) [29 USCS § 211(d)], or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

(b) For the purposes of subsection (a)(1) proof that any employee was employed in any place of employment where goods shipped or sold in commerce were produced, within ninety days prior to the removal of the goods from such place of employment, shall be prima facie evidence that such employee was engaged in the production of such goods.

§ 216. Penalties

(a) Fines and imprisonment. Any person who willfully violates any of the provisions of section 15 [29 USCS § 215] 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 6 or section 7 of this Act [29 USCS § 206 or 207] 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 15(a)(3) of this Act [29 USCS § 215(a)(3)] shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 15(a)(3) [29 USCS § 215(a)(3)], including without limitation employment, reinstatement, promotion, and the payment of wages lost and an

additional equal amount as liquidated damages. Any employer who violates section 3(m)(2)(B) [29 USCS § 203(m)(2)(B)] shall be liable to the employee or employees affected in the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and in an additional equal amount as liquidated damages. An action to recover the liability prescribed in 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 17 [29 USCS § 217] 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 6 or section 7 of this Act [29 USCS § 206 or 207] 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 15(a)(3) [29 USCS § 215(a)(3)].

(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 6 or 7 of this Act [29 USCS § 206 or 207], 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 the unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) 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 6 and 7 [29 USCS §§ 206 and 207] or liquidated or other damages provided by this subsection owing to such employee by

an employer liable under the provisions of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Administrator [Secretary] 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 Administrator [Secretary], 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 Administrator [Secretary] under this subsection for the purposes of the statutes of limitations provided in section 6(a) of the Portal-to-Portal Act of 1947 [29 USCS § 255(a)], 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. The authority and requirements described in this subsection shall apply with respect to a violation of section 3(m)(2)(B) [29 USCS § 203(m)(2)(B)], as appropriate, and the employer shall be liable for the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and an additional equal amount as liquidated damages.

(d) Savings provision. In any action or proceeding commenced prior to, on, or after the date of enactment of this subsection [Aug. 8, 1956], no employer shall be subject to any liability or punishment under this Act or the Portal-to-Portal Act of 1947 [29 USCS §§ 251 et seq.] on account of his failure to comply with any provision or provisions of such Acts (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 13(f) [29 USCS § 213(f)] 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) [expiration of 90 days from Aug. 30, 1957], or (3) with respect to work performed in a possession named in section 6(a)(3) at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e) Child labor protections.

(1)

(A) Any person who violates the provisions of sections [section] 12 or 13(c) [29 USCS § 212 or 213(c)], 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 6 or 7 [29 USCS § 206 or 207], relating to wages, shall be subject to a civil penalty not to exceed $1,100 for each such violation. Any person who violates section 3(m)(2)(B) [29 USCS § 203(m)(2)(B)] shall be subject to a civil penalty not to exceed $1,100 for each such violation, as the Secretary determines appropriate, in addition to being liable to the employee or employees affected for all tips unlawfully kept, and an additional equal amount as liquidated damages, as described in subsection (b).

(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 15(a)(4) [29 USCS § 215(a)(4)] or a repeated or willful violation of section 15(a)(2) [29 USCS § 215(a)(2)], 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, United States Code, and regulations to be promulgated by the Secretary.

(5) Except for civil penalties collected for violations of section 12 [29 USCS § 212], 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 2 of the Act entitled "An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof and for other purposes" (29 U.S.C. 9a). Civil penalties collected for violations of section 12 [29 USCS § 212] shall be deposited in the general fund of the Treasury.

§ 216a. [Repealed]

§ 216b. Liability for overtime work performed prior to July 20, 1949

No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended [29 USCS §§ 201 et seq., generally; for full classification, consult USCS Tables volumes] (in any action or proceeding commenced prior to or on or after the effective date of this Act), on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to July 20, 1949, if the compensation paid prior to July 20, 1949, for such work was at least equal to the compensation which would have been payable for such work had section 7(d)(6) and (7) and section 7(g) of the Fair Labor Standards Act of 1938, as amended [29 USCS § 207(d)(6), (7) and (g)], been in effect at the time of such payment.

§ 217. Injunction proceedings

The district courts, together with [the United States District Court for the District of the Canal Zone,] the District Court of the Virgin Islands, and the District Court of Guam shall have jurisdiction, for cause shown, to restrain violations of section 15 [29 USCS § 215], including in the case of violations of section 15(a)(2) [29 USCS § 215(a)(2)] the restraint of any withholding of payment of minimum wages or overtime compensation found by the court to be due to employees under this Act [29 USCS §§ 201 et seq., generally; for full classification, consult USCS Tables volumes] (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the provisions of section 6 of the Portal-to-Portal Act of 1947 [29 USCS § 255]).

§ 218. Relation to other laws

(a) No provision of this Act 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 Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of this Act 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 Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

(b) Notwithstanding any other provision of this Act (other than section 13(f) [29 USCS § 213(f)]) 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, United States Code, 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 6(a)(1) of this Act [29 USCS § 206(a)(1)] (except that the wage rate provided for in section 6(b) [29 USCS § 206(b)] 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 7(a)(1) of this Act [29 USCS § 207(a)(1)].

§ 218a. [Repealed]

§ 218b. Notice to employees

(a) In general. In accordance with regulations promulgated by the Secretary, an employer to which this Act [29 USCS §§ 201 et seq.] applies, shall provide to each employee at the time of hiring (or with respect to current employees, not later than March 1, 2013), written notice—

(1) informing the employee of the existence of an Exchange, including a description of the services provided by such Exchange, and the manner in which the employee may contact the Exchange to request assistance;

(2) if the employer plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs,

that the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986 [26 USCS § 36B] and a cost sharing reduction under section 1402 of the Patient Protection and Affordable Care Act [42 USCS § 18071] if the employee purchases a qualified health plan through the Exchange; and

(3) if the employee purchases a qualified health plan through the Exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.

(b) Effective date. Subsection (a) shall take effect with respect to employers in a State beginning on March 1, 2013.

§ 218c. Protections for employees

(a) Prohibition. No employer shall discharge or in any manner discriminate against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment because the employee (or an individual acting at the request of the employee) has—

(1) received a credit under section 36B of the Internal Revenue Code of 1986 [26 USCS § 36B] or a subsidy under section 1402 of this Act;

(2) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of, any provision of this title (or an amendment made by this title);

(3) testified or is about to testify in a proceeding concerning such violation;

(4) assisted or participated, or is about to assist or participate, in such a proceeding; or

(5) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any provision of this title (or amendment), or any order, rule, regulation, standard, or ban under this title (or amendment).

(b) Complaint procedure.

(1) In general. An employee who believes that he or she has been discharged or otherwise discriminated against by any employer in violation of this section may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.

(2) No limitation on rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

§ 219. Separability of provisions

If any provision of this Act [29 USCS §§ 201 et seq., generally; for full classification, consult USCS Tables volumes] or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

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