United States Department of Labor

Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage

By Jonathan Grossman

When he felt the time was ripe,
President Roosevelt asked
Secretary of Labor Perkins,
'What happened to that
nice unconstitutional bill
you had tucked away?'

On Saturday, June 25, 1938, to avoid pocket vetoes 9 days after Congress had adjourned, President Franklin D. Roosevelt signed 121 bills. Among these bills was a landmark law in the Nation's social and economic development -- Fair Labor Standards Act of 1938 (FLSA). Against a history of judicial opposition, the depression-born FLSA had survived, not unscathed, more than a year of Congressional altercation. In its final form, the act applied to industries whose combined employment represented only about one-fifth of the labor force. In these industries, it banned oppressive child labor and set the minimum hourly wage at 25 cents, and the maximum workweek at 44 hours.[1]

Forty years later, a distinguished news commentator asked incredulously: "My God! 25 cents an hour! Why all the fuss?" President Roosevelt expressed a similar sentiment in a "fireside chat" the night before the signing. He warned: "Do not let any calamity-howling executive with an income of $1,000 a day, ...tell you...that a wage of $11 a week is going to have a disastrous effect on all American industry."[2] In light of the social legislation of 1978, Americans today may be astonished that a law with such moderate standards could have been thought so revolutionary.

Courting disaster

The Supreme Court had been one of the major obstacles to wage-hour and child-labor laws. Among notable cases is the 1918 case of Hammer v. Dagenhart in which the Court by one vote held unconstitutional a Federal child-labor law. Similarly in Adkins v. Children's Hospital in 1923, the Court by a narrow margin voided the District of Columbia law that set minimum wages for women. During the 1930's, the Court's action on social legislation was even more devastating.[3]

New Deal promise. In 1933, under the "New Deal" program, Roosevelt's advisers developed a National Industrial Recovery Act (NRA).[4] The act suspended antitrust laws so that industries could enforce fair-trade codes resulting in less competition and higher wages. On signing the bill, the President stated: "History will probably record the National Industrial Recovery Act as the most important and far-reaching legislation ever enacted by the American Congress." The law was popular, and one family in Darby, Penn., christened a newborn daughter Nira to honor it.[5]

As an early step of the NRA, Roosevelt promulgated a President's Reemployment Agreement "to raise wages, create employment, and thus restore business." Employers signed more than 2.3 million agreements, covering 16.3 million employees. Signers agreed to a workweek between 35 and 40 hours and a minimum wage of $12 to $15 a week and undertook, with some exceptions, not to employ youths under 16 years of age. Employers who signed the agreement displayed a "badge of honor," a blue eagle over the motto "We do our part." Patriotic Americans were expected to buy only from "Blue Eagle" business concerns.[6]

In the meantime, various industries developed more complete codes. The Cotton Textile Code was the first of these and one of the most important. It provided for a 40-hour workweek, set a minimum weekly wage of $13 in the North and $12 in the South, and abolished child labor. The President said this code made him "happier than any other one thing...since I have come to Washington, for the code abolished child labor in the textile industry." He added: "After years of fruitless effort and discussion, this ancient atrocity went out in a day."[7]

A crushing blow. On "Black Monday," May 27, 1935, the Supreme Court disarmed the NRA as the major depression-fighting weapon of the New Deal. The 1935 case of Schechter Corp. v. United States tested the constitutionality of the NRA by questioning a code to improve the sordid conditions under which chickens were slaughtered and sold to retail kosher butchers.[8] All nine justices agreed that the act was an unconstitutional delegation of government power to private interests. Even the liberal Benjamin Cardozo thought it was "delegation running riot." Though the "sick chicken" decision seems an absurd case upon which to decide the fate of so sweeping a policy, it invalidated not only the restrictive trade practices set by the NRA-authorized codes, but the codes' progressive labor provisions as well.[9]

As if to head off further attempts at labor reform, the Supreme Court, in a series of decisions, invalidated both State and Federal labor laws. Most notorious was the 1936 case of Joseph Tipaldo.[10]The manager of a Brooklyn, N.Y., laundry, Tipaldo had been paying nine laundry women only $10 a week, in violation of the New York State minimum wage law. When forced to pay his workers $14.88, Tipaldo coerced them to kick back the difference. When Tipaldo was jailed on charges of violating the State law, forgery, and conspiracy, his lawyers sought a writ of habeas corpus on grounds the New York law was unconstitutional. The Supreme Court, by a 5-to-4 majority voided the law as a violation of liberty of contract.[11]

The Tipaldo decision was among the most unpopular ever rendered by the Supreme Court. Even bitter foes of President Roosevelt and the New Deal criticized the Court. Ex-President Herbert Hoover said the Court had gone to extremes. Conservative Republican Congressman Hamilton Fish called it a "new Dred Scott decision" condemning 3 million women and children to economic slavery.[12]

A switch in time. Wage-hour legislation was a campaign issue in the 1936 Presidential race. The Democratic platform called for higher labor standards, and, in his campaign, Roosevelt promised to seek some constitutional way of protecting workers. He tried to pave the way for such legislation in his speeches and new conferences in which he spoke of the breakdown of child labor provisions, minimum wages, and maximum hour standards after the demise of the NRA codes.

When Roosevelt won the 1936 election by 523 electoral votes to 8, he interpreted his landslide victory as support for the New Deal and was determined to overcome the obstacle of Supreme Court opposition as soon as possible. In February 1937, he struck back at the "nine old men" of the Bench: He proposed to "pack" the Court by adding up to six extra judges, one for each judge who did not retire at age 70. Roosevelt further voiced his disappointment with the Court at the victory dinner for his second inauguration, saying if the "three-horse team [of the executive, legislative, and judicial branches] pulls as one, the field will be ploughed," but that the field will not be ploughed if one horse lies down in the traces or plunges off in another direction."[13]

However, Roosevelt's metaphorical maverick fell in step. On "White Monday," March 29, 1937, the Court reversed its course when it decided the case of West Coast Hotel Company v. Parrish.[14] Elsie Parrish, a former chambermaid at the Cascadian Hotel in Wenatchee, Wash., sued for $216.19 in back wages, charging that the hotel had paid her less than the State minimum wage. In an unexpected turn-around, Justice Owen Roberts voted with the four-man liberal minority to uphold the Washington minimum wage law.

As other close decisions continued to validate social and economic legislation, support for Roosevelt's Court "reorganization" faded. Meanwhile, Justice Roberts felt called upon to deny that he had switched sides to ward off Roosevelt's court-packing plan. He claimed valid legal distinctions between the Tipaldo case and the Parrish

case. Nevertheless, many historians subscribe to the contemporary view of Robert's vote, that "a switch in time saved nine."[15]

A young worker's plea

While President Franklin Roosevelt was in Bedford, Mass., campaigning for reelection, a young girl tried to pass him an envelope. But a policeman threw her back into the crowd. Roosevelt told an aide, "Get the note from the girl." Her note read,

> I wish you could do something to help us girls....We have been working in a sewing factory,... and up to a few months ago we were getting our minimum pay of $11 a week... Today the 200 of us girls have been cut down to $4 and $5 and $6 a week.

To a reporter's question, the President replied, "Something has to be done about the elimination of child labor and long hours and starvation wages."

-FRANKLIN D. ROOSEVELT
Public Papers and Addresses, Vol. V
New York, Random House, 1936), pp. 624-25.

Back to the drawing board

Justice Roberts' "Big Switch" is an important event in American legal history. It is also a turning point in American social history, for it marked a new legal attitude toward labor standards. To be sure, validating a single State law was a far cry from upholding general Federal legislation, but the Parrish decision encouraged advocates of fair labor standards to work all the harder to develop a bill that might be upheld by the Supreme Court.

An ardent advocate. No top government official worked more ardently to develop legislation to help underpaid workers and exploited child laborers than Secretary Frances Perkins. Almost all her working life, Perkins fought for pro-labor legislation. To avoid the sometime pitfall of judicial review, she consulted legal experts in forming legislation. Her autobiographical account of her relations with President Roosevelt is filled with the names of lawyers with whom she discussed legislation: Felix Frankfurter, Thomas Corcoran, Gerard Reilly, Benjamin Cohen, Charles Wyzanski, and many others both within and outside Government.

When, in 1933, President Roosevelt asked Frances Perkins to become Secretary of Labor, she told him that she would accept if she could advocate a law to put a floor under wages and a ceiling over hours of work and to abolish abuses of child labor. When Roosevelt heartily agreed, Perkins asked him, "Have you considered that to launch such a program... might be considered unconstitutional?" Roosevelt retorted, "Well, we can work out something when the time comes."[16]

During the constitutional crisis over the NRA, Secretary Perkins asked lawyers at the Department of Labor to draw up two wage-hour and child-labor bills which might survive Supreme Court review. She then told Roosevelt, "I have something up my sleeve....I've got two bills ...locked in the lower left-hand drawer of my desk against an emergency." Roosevelt laughed and said, "There's New England caution for you.... You're pretty unconstitutional, aren't you?"[17]

Earlier Government groundwork. One of the bills that Perkins had "locked" in the bottom drawer of her desk was used before the 1937 "Big Switch." The bill proposed using the purchasing power of the Government as an instrument for improving labor standards. Under the bill Government contractors would have to agree to pay the "prevailing wage" and meet other labor standards. The idea had been tried in World War I to woo worker

support for the war. Then, President Hoover reincarnated the "prevailing wage" and fair standards criteria as conditions for bidding for the construction of public buildings. This act -- the Davis-Bacon Act -- in expanded form stands as a bulwark of labor standards in the construction industry.

Roosevelt and Perkins tried to make model employers of government contractors in all fields, not just construction. They were dismayed to find that, except in public construction, the Federal Government actually encouraged employers to exploit labor because the Government had to award every contract to the lowest bidder. In 1935, approximately 40 percent of government contractors, employing 1.5 million workers, cut wages below and stretched hours above the standards developed under the NRA.

The Roosevelt-Perkins remedial initiative resulted in the Public Contracts Act of 1936 (Walsh-Healey). The act required most government contractors to adopt an 8-hour day and a 40-hour week, to employ only those over 16 years of age if they were boys or 18 years of age if they were girls, and to pay a "prevailing minimum wage" to be determined by the Secretary of Labor. The bill had been hotly contested and much diluted before it passed Congress on June 30, 1936. Though limited to government supply contracts and weakened by amendments and court interpretations, the Walsh-Healey Public Contracts Act was hailed as a token of good faith by the Federal Government -- that it intended to lead the way to better pay and working conditions.[18]

A broader bill is born

President Roosevelt had postponed action on a fair labor standards law because of his fight to "pack" the Court. After the "switch in time," when he felt the time was ripe, he asked Frances Perkins, "What happened to that nice unconstitutional bill you tucked away?"

The bill -- the second that Perkins had "tucked" away -- was a general fair labor standards act. To cope with the danger of judicial review, Perkins' lawyers had taken several constitutional approaches so that, if one or two legal principles were invalidated, the bill might still be accepted. The bill provided for minimum-wage boards which would determine, after public hearing and consideration of cost-of-living figures from the Bureau of Labor Statistics, whether wages in particular industries were below subsistence levels.

Perkins sent her draft to the White House where Thomas Corcoran and Benjamin Cohen, two trusted legal advisers of the President, with the Supreme Court in mind, added new provisions to the already lengthy measure. "Ben Cohen and I worked on the bill and the political effort behind it for nearly 4 years with Senator Black and Sidney Hillman," Corcoran noted.[19]

An early form of the bill being readied for Congress affected only wages and hours. To that version Roosevelt added a child-labor provision based on the political judgment that adding a clause banning goods in interstate commerce produced by children under 16 years of age would increase the chance of getting a wage-hour measure through both Houses, because child-labor limitations were popular in Congress.[20]

Congress-round I

On May 24, 1937, President Roosevelt sent the bill to Congress with a message that America should be able to give "all our able-bodied working men and women a fair day's pay for a fair day's work." He continued: "A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason for chiseling worker's wages or stretching workers' hours." Though States had the right to set standards within their own borders, he said, goods produced under "conditions that do not meet rudimentary standards of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate trade." He asked Congress to pass applicable legislation"at this session."[21]

Senator Hugo Black of Alabama, a champion of a 30-hour workweek, agreed to sponsor the Administration bill on this subject in the Senate, while Representative William P. Connery of Massachusetts introduced corresponding legislation in the House. The Black-Connery bill had wide Public support, and its path seemed

smoothed by arrangements for a joint hearing by the labor committees of both Houses.

Generally, the bill provided for a 40-cent-an-hour minimum wage, a 40-hour maximum workweek, and a minimum working age of 16 except in certain industries outside of mining and manufacturing. The bill also proposed a five-member labor standards board which could authorize still higher wages and shorter hours after review of certain cases.

Proponents of the bill stressed the need to fulfill the President's promise to correct conditions under which "one-third of the population" were "ill-nourished, ill-clad, and ill- housed." They pointed out that, in industries which produced products for interstate commerce, the bill would end oppressive child labor and "unnecessarily long hours which wear out part of the working population while they keep the rest from having work to do." Shortening hours, they argued, would "create new jobs...for millions of our unskilled unemployed," and minimum wages would "underpin the whole wage structure...at a point from which collective bargaining could take over." [22]

Advocates of higher labor standards described the conditions of sweated labor. For example, a survey by the Labor Department's Children's Bureau of a cross section of 449 children in several States showed nearly one-fourth of them working 60 hours or longer a week and only one-third working 40 hours or less a week. The median wage was slightly over $4 a week.[23]

One advocate, Commissioner of Labor Statistics Isador Lubin, explained to the joint Senate-House committee that during depressions the ability to overwork employees, rather than efficiency, determined business success. The economy, he reported, had deteriorated to the chaotic stage where employers with high standards were forced by cut-throat competition to exploit labor in order to survive. "The outstanding feature of the proposed legislation," Lubin said, is that "it aims to establish by law a plane of competition far above that which could be maintained in the absence of government edict." [24]

Opponents of the bill charged that, although the President might damn them as "economic royalists and sweaters of labor," the Black-Connery bill was "a bad bill badly drawn" which would lead the country to a "tyrannical industrial dictatorship." They said New Deal rhetoric, like "the smoke screen of the cuttle fish," diverted attention from what amounted to socialist planning. Prosperity, they insisted, depended on the "genius" of American business, but how could business "find any time left to provide jobs if we are to persist in loading upon it these everlastingly multiplying governmental mandates and delivering it to the mercies of multiplying and hampering Federal bureaucracy?"[25]

Organized labor supported the bill but was split on how strong it should be. Some leaders, such as Sidney Hillman of the Amalgamated Clothing Workers Union and David Dubinsky of the International Ladies' Garment Workers' Union, supported a strong bill. In fact, when Southern congressmen asked for the setting of lower pay for their region, Dubinsky's union suggested lower pay for Southern congressmen. But William Green of the American Federation of Labor (AFL) and John L. Lewis of the Congress of Industrial Organization (CIO), on one of the rare occasions when they agreed, both favored a bill which would limit labor standards to low-paid and essentially unorganized workers. Based on some past experiences, many union leaders feared that a minimum wage might become a maximum and that wage boards would intervene in areas which they wanted reserved for labor-management negotiations. They were satisfied when the bill was amended to exclude work covered by collective bargaining.

The weakened bill passed the Senate July 31, 1937, by a vote of 56 to 28 and would have easily passed the House if it had been put to a vote. But a coalition of Republicans and conservative Democrats bottled it up in the House Rules Committee. After a long hot summer, Congress adjourned without House action on fair labor standards.[26]

Congress-round II

An angry President Roosevelt decided to press again for passage of the Black-Connery bill. Having lost popularity and split the Democratic Party in his battle to "pack" the Supreme Court, Roosevelt felt that attacking abuses of child labor and sweatshop wages and hours was a popular cause that might reunite the party. A wage-hour, child-labor law promised to be a happy marriage of high idealism and practical politics.

On October 12, 1937, Roosevelt called a special session of Congress to convene on November 15. The public interest, he said, required immediate Congressional action: "The exploitation of child labor and the undercutting of wages and the stretching of the hours of the poorest paid workers in periods of business recession has a serious effect on buying power".[27]

Despite White House and business pressure, the conservative alliance of Republicans and Southern Democrats that controlled the House Rules Committee refused to discharge the bill as it stood. Congresswoman Mary Norton of New Jersey, now chairing the House Labor Committee, made a valiant attempt to shake the bill loose".[28] Many representatives had told her that they agreed with the principles of the bill but that they objected to a five-man wage board with broad powers. Therefore, Norton told the House of Representatives that the Labor Committee would offer an amendment to change the administration of the bill from a five-man board to an administrator under the Department of Labor. Urging representatives to sign a petition to jar the bill out of committee, Norton appealed:

> I now hope and urge that these Members will keep faith with me, as I have kept faith with them, and sign the petition . . . we are approaching Thanksgiving Day, . . . I do not see how any Member of this House can enjoy his Thanksgiving dinner tomorrow if he fails to put his name to that petition this afternoon.

Though Norton missed her Thanksgiving Day dead-line, by December 2, the bill's supporters had rounded up enough signers to give the petition the 218 signatures necessary to bring the bill to a vote on the House floor.[29]

With victory within grasp, the bill became a battle-ground in the war raging between the AFL and the CIO. The AFL accused the Roosevelt Administration of favoring industrial over craft unions and opposed wage-board determination of labor standards for specific industries. Accordingly, the AFL fought for a substitute bill with a flat 40-cent-an-hour minimum wage and a maximum 40-hour week.

In the ensuing confusion, shortly, before the Christmas holiday of 1937, the House by a vote of 218 to 198 unexpectedly sent the bill back to the Labor Committee.[30] In her memoir of President Roosevelt, Frances Perkins wrote:

> This was the first time that a major administration bill had been defeated on the floor of the House. The press took the view that this was the death knell of wage-hour legislation as well as a decisive blow to the President's prestige.[31]

Roosevelt tries again

Again, Roosevelt returned to the fray. In his annual message to Congress on January 3, 1938, he said he was seeking "legislation to end starvation wages and intolerable hours." He paid deference to the South by saying that "no reasonable person seeks a complete uniformity in wages." He also made peace overtures to business by pointing out that he was forgoing "drastic" change, and he appeased organized labor, saying that "more desirable wages are and should continue to be the product of collective bargaining."[32]

The day following Roosevelt's message, Representative Lister Hill, a strong Roosevelt supporter, won an Alabama election primary for the Senate by an almost 2-to-1 majority over an anti-New Deal congressman. The victory was significant because much of the opposition to wage-hour laws came from Southern congressmen. In

February, a national public opinion poll showed that 67 percent of the populace favored the wage-hour law, with even the South showing a substantial plurality of support for higher standards.[33]

Reworking the bill. In the meantime, Department of Labor lawyers worked on a new bill. Privately, Roosevelt had told Perkins that the length and complexity of the bill caused some of its difficulties. "Can't it be boiled down to two pages?" he asked. Lawyers trying to simplify the bill faced the problem that, although legal language makes legislation difficult to understand, bills written in simple English are often difficult for the courts to enforce. And because the wage-hour, child-labor bill had been drafted with the Supreme Court in mind, Solicitor Labor Gerard Reilly could not meet the President's two-page goal; however, he succeeded in cutting the bill from 40 to 10 pages.

In late January 1938, Reilly and Perkins brought the revision to President Roosevelt. He approved it, and the new bill went to Congress.[34]

Roosevelt and Perkins prepared for rugged opposition. Roosevelt put pressure on Congressmen who had ridden his coattails to election victory in 1936 and who then knifed New Deal legislation. Perkins added to her staff Rufus Pole, a young lawyer, to follow the bill through Congress. Pole worked resourcefully pinpointed the issues that bothered some Congressmen, and identified a large number of Senators and Representatives who could be counted on to vote favorably.

Norton appointed Representative Robert Ramspeck of Georgia to head a subcommittee to bridge the gap between various proposals. The subcommittee's efforts resulted in the Ramspeck compromise which Perkins felt "contained the bare essentials she could support."[35] The compromise retained the 40-cent minimum hourly wage and the 40-hour maximum workweek. It did not provide for an administrator as had the previous bill which had been voted back to the committee by the House. Instead, the compromise allowed for a five-member wage board which would be less powerful than those proposed by the Black-Connery bill.

Congress-the final round

The House Labor Committee voted down the Ramspeck compromise, but, by a 10-to-4 vote, approved an even more "barebones" bill presented by Norton. Her bill following the AFL proposal, provided for a 40-cent hourly minimum wage, replaced the wage boards proposed by the Ramspeck compromise with an administrator and advising commission, and allowed for procedures for investigation into certain cases.[36]

A message from the voters. Again, the House Rules Committee (under Rep. John J. O'Conner of New York, whom Roosevelt called an "obstructionist" who "pickled" New Deal programs) prevented discussion of the bill on the House floor by a vote of 8 to 6.[37] The President then put his prestige on the line. On April 30, 1938, for the sixth time since taking office, he communicated with Congress over wages and hours through a letter to Mrs. Norton. He said he had no right whatsoever as President to criticize the rules but suggested as an ex-legislator and as a friend that "the whole membership of the legislative body should be given full and free opportunity to discuss [exceptional measures] which are of undoubted national importance because they relate to major policies of Government and affect the lives of millions of people." He avoided judgement of the bill but noted that the Rules Committee, by a narrow vote, had prevented 435 members from "discussing, amending, recommitting, defeating or passing some kind of a bill." He concluded: "I still hope that the House as a whole can vote on a wage and hour bill. ...I hope that the democratic processes of legislation will continue."[38]

Three days later, May 3, 1938, Congressman Claude Pepper won a resounding victory over anti-New Dealer J. Mark Wilcox in the Florida Senate primary. Wilcox had made New Deal programs the major issue and had labeled Pepper "Roosevelt rubber stamp."

Nothing impresses Congressmen more than election returns. The January and May victories of New Deal advocated in the South brought home to Southern Congressmen the message of how their constituents felt about fair labor standards. A petition to discharge the bill from the Rules Committee was placed on the desk of the Speaker of the House on May 6, at 12 noon. In 2 hours and 20 minutes, 218 members has signed it, and additional members were waiting in the aisles.[39]

Braving the floor battle. Proponents of the wage-hour, child-labor bill pressed the attack. They continued to point to "horror stories." One Congressman quoted a magazine article entitled "All Work and No Pay" which told how, in a company that paid wages in scrip for use in the company store, pay envelopes contained nothing for a full week's work after the deduction of store charges.

The most bitter controversy raged over labor standards in the South. "There are in the State of Georgia," one Indiana Congressman declaimed, "canning factories working ... women 10 hours a day for $4.50 a week. Can the canning factories of Indiana and Connecticut of New York continue to exist and meet such competitive labor costs?"[40] Southern Congressmen, in turn, challenged the Northern "monopolists" who hypocritically "loll on their tongues" words like "slave labor" and "sweat-shops" and support bills which sentence Southern industry to death. Some Southern employers told the Department of Labor that they could not live with a 25-cent-an-hour minimum wage. They would have to fire all their people, they said. Adapting a biblical quotation, Representative John McClellan of Arkansas rhetorically asked, "What profiteth the laborer of the South if he gain the enactment of a wage and hour law -- 40 cents per hour and 40 hours per week -- if he then lose the opportunity to work?"[41]

Partly because of Southern protests, provisions of the act were altered so that the minimum wage was reduced to 25 cents an hour for the first year of the act. Southerners gained additional concessions, such as a requirement that wage administrators consider lower costs of living and higher freight rates in the South before recommending wages above the minimum.

Though the revised bill had reduced substantially the administrative machinery provided for in earlier drafts, several Congressmen singled out Secretary Perkins for personal attack. One Perkins detractor noted that, although Congress had "overwhelmingly rebelled" against delegation of power,

> We delegate to Madam Perkins the authority and power to 'issue an order declaring such industry to be an industry affecting commerce.' Now section 9 is ...one of the 'snooping' sections of the bill. Imagine the feeling of the merchant or the industry up in your district when a 'designated representative'...of Mme. Perkins' enter and inspect such places and such records'...I know no previous law going quite so far.[42]

A resulting compromise modified the authority of the administrator in the Department of Labor.

The bill was voted upon May 24, 1938, with a 314-to-97 majority. After the House had passed the bill, the Senate-House Conference Committee made still more changes to reconcile differences. During the legislative battles over fair labor standards, members of Congress had proposed 72 amendments. Almost every change sought exemptions, narrowed coverage, lowered standards, weakened administration, limited investigation, or in some other way worked to weaken the bill.

The surviving proposal as approved by the conference committee finally passed the House on June 13, 1938, by a vote of 291 to 89. Shortly there-after, the Senate approved it without a record of the votes. Congress then sent the bill to the President. On June 25, 1938, the President signed the Fair Labor Standards Act to become effective on October 24, 1938.[43]

Jonathan Grossman was the Historian for the U.S. Department of Labor. Henry Guzda assisted. This article originally appeared in the Monthly Labor Review of June 1978. The final section, titled "The act as law" and containing dated material, has been omitted in the electronic version.

NOTES

1. The New York Times, June 27, 28, 1938; Harry S. Kantor, "Two Decades of the Fair Labor Standards Act," Monthly Labor Review, October 1958, pp. 1097-98.

2. Franklin Roosevelt, Public Papers and Address, Vol. VII (New York, Random House, 1937), p.392.

3. Hammer v. Dagenhart, 247 U.S. 251 (1918); Adkins v. Children's Hospital, 262 U.S. 525 (1923).

4. The proper initials for the Law are NIRA. The initials for the National Recovery Administration created by the act as NRA. Following a common practice, the initials NRA are used here for both the law and the administration.

5. Roosevelt, Public Papers, II (June 16, 1933), p.246.

6. Roosevelt, Public Papers, II (July 24 and 27, 1933), pp. 301, 308-12.

7. Roosevelt, Public Papers, II (July 9 and 24, 1933), pp. 275, 99; Frances Perkins, The Roosevelt I Knew (New York, Viking Press, 1946); pp. 204-08.

8. Schechter Corp. v. United States, 295 U.S. 495(1935).

9. Arthur M. Schlesinger, The Age of Roosevelt (Boston, Mass., Houghton-Mifflin Co., 1960), pp. 277-83; Roosevelt, Public Papers, IV (May 29, 1935), pp. 198-221; John W. Chambers, "The Big Switch: Justice Roberts and the Minimum-Wage Cases," Labor History, Vol. X, Winter 1969, pp.49-52.

10. Morehead v. Tipaldo, 298 U.S. 587 (1936).

11. Ironically, like the four Schechter brothers in the NRA case who went broke, Tipaldo also suffered financially. "My customers wouldn't give my drivers their wash," he lamented. Columnist Heywood Broun quipped. "Those who live by the chisel will die under the hammer." Chambers, "Big Switch," p. 57.

12. Chambers, "Big Switch," pp. 54-58.

13. Roosevelt, Public Papers, VI (Feb. 5 1937), pp. 51-59; VI (Mar. 4, 1937), p. 116; George Martin, Madam Secretary Frances Perkins(Boston Mass., Houghton-Mifflin Co., 1976), pp. 388-90.

14. West Coast Hotel Company v. Parrish, 300 U.S. 379 (1937).

15. Chambers, "Big Switch," pp. 44, 73; Robert P. Ingalls, "New York and the Minimum-Wage Movement, 1933-1937," Labor History, Vol. XV, Spring 1974, pp. 191-97.

16. Perkins, Roosevelt, p. 152

17. Perkins, Roosevelt, pp. 248-49, 252-53; Roosevelt, Public Papers, V(Jan.` 3, 1936), p. 15; Jonathan Grossman with Gerard D. Reilly, Solicitor of Labor, Oct. 22, 1965.

18. 25th Annual Report, Fiscal Year 1937 (U.S. Department of Labor), pp. 34-35; Herbert C. Morton, Public Contracts and Private Wages: Experience Under the Walsh-Healey Act(Washington, D.C., The Brookings Institution, 1965), pp. 7-10; The Department of Labor (New York, Praeger Publishers, 1973), pp. 19-20, 211-13.

19. Letter from Thomas Corcoran to Jonathan Grossman, Ap. 10, 1978.

20. Perkins, Roosevelt, pp. 254-57; Roosevelt, Public Papers, V(Jan. 7, 1937); Jeremy P. Felt, "The Child Labor Provisions of the Fair Labor Standards Act," Labor History , Vol. XI, Fall 1970, pp. 474-75; Interview, Jonathan Grossman with Gerard D. Reilly, Solicitor of Labor, Oct. 22, 1965.

21. Roosevelt, Public Papers, VI(May 24, 1937), pp. 209-14.

22. Record of the Discussion before the U.S. Congress on the FLSA of 1938, I.(U.S. Department of Labor, Bureau of Labor Statistics)(Washington, GAO, 1938), pp.20-21.

23. Hearings to Provide for the Establishment of Fair Labor Standards in Employments in and Affecting Interstate Commerce and for Other Purposes, Vol. V.(1937). (U.S. Congress, Joint Committee on Education and Labor, 75th Cong., 1st sess), pp. 383-84.

24. Isador Lubin, Testimony, Hearings to Provide Fair Labor Standards(1937), pp.309-10.

25. Record of Discussion of FLSA of 1938, I(U.S. Department of Labor), pp.38, 115, 124.

26. Perkins, Roosevelt,pp. 257-59; Paul Douglas and Joseph Hackman, "Fair Labor Standards Act, I," "Political Science Quarterly Vol. LIII, December 1938, pp. 500-03, 508; The New York Times, Aug. 18, 1937.

27. Roosevelt, Public Papers, VI (Oct. 4, 1937, Oct. 12, 1937, Nov. 15, 1937), pp. 404, 428-29, 496

28. Mrs.Norton replaced Representative Connery as chair of the House Labor Committee after his death.

29. Record of Discussion of FLSA of 1938, (U.S. Department of Labor), (1937), p. 415.

30. The New York Times, Dec. 13, 1937; Douglas and Hackman, "FLSA," pp.508-11.

31. Perkins, Roosevelt, p. 261.

32. Roosevelt, Public Papers, VII (Jan. 3, 1938),p.6.

33. The New York Times, Jan. 5, Feb. 16, May 9, 1938.

34. Perkins, Roosevelt, p. 261.

35. Roosevelt, public Papers, VII (Aug. 16, 1938), pp. 488-89; Perking, Roosevelt, pp. 262-63.

36. Roosevelt, Public Papers, VI(May 24, 1937), pp. 215; Perking, Roosevelt pp. 262-63.

37. Perking, Roosevelt, p.263; Roosevelt, Public Papers, VII (Aug. 16, 1938), p.489.

38. Roosevelt, Public Papers, VII(Apr. 30, 1938), pp.333-34.

39. The New York Times, May 6, 7, 1938; Perking, Roosevelt, pp.263-64 (Perking makes an error in the date of Lister Hill's primary victory); Jonathan Grossman and James Anderson, interview with Clara Beyer, Nov, 5, 1965.

40. Record of Discussion of FLSA of 1938. V (U.S. Department of Labor), p. 873.

41. "Interview with Clara Beyer, No. 25, 1965; U.S. Record of Discussion of FLSA of 1938. V (U.S. Department of Labor), pp. 873, 915, 929.

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Here's how overtime changes could hurt restaurant employees

August 8, 2014

The National Restaurant Association and other business groups aren't waiting for the Department of Labor to release its proposed changes to overtime regulations to make sure the regulators who are rewriting the rules fully understand the impact changes could have on opportunities for career advancement within restaurants and other industries.

The NRA is co-leading the Partnership to Protect Workplace Opportunity to educate policymakers about how changes to overtime regulations will affect businesses at the ground level.

More than a dozen leading business organizations have joined so far, including the Society for Human Resource Management and organizations representing retailers and manufacturers. Together, coalition members employ millions of Americans.

"The types of changes that are being discussed have the potential to radically change standards that have been in place for decades," said Angelo Amador, NRA vice president of labor and workforce policy. "Any change in overtime regulations will affect all industries, but the restaurant and retail sectors may be hit particularly hard."

The background: President Obama in March issued a memo asking the DOL to update overtime regulations, which were last revised a decade ago. Since then, the DOL has held a roundtable session with business leaders to hear their concerns about possible changes, but hasn't released its proposal.

Three criteria are now used to determine whether an employee is exempt from overtime. All three are expected to be targeted for revision:

- **Salary threshold:** Employees must earn a minimum of $455 a week, or $23,600 a year.
- **Manner of pay:** Employees must be paid on a salary basis, meaning employers can't reduce their pay for working a partial day.
- **Managerial/executive:** The employee's "primary duty" must qualify them as an executive, professional or administrative employee.

Get the NRA's summary of the current rules on overtime.

The challenge for restaurants: Supporters say they want to increase Americans' take-home pay, but far-reaching changes to the rules could have the opposite effect. That's what restaurant operators told DOL officials in the recent roundtable session. Specifically, they said:

- Managers could lose pay. If the DOL's criteria no longer align with the duties restaurant managers typically perform, many will likely be paid on an hourly rather than salaried basis. That could mean lower pay, even with overtime.
- Incentives could disappear. Many restaurant managers and executives start their careers in non-managerial positions and move up to managerial jobs with new, performance-based incentives. A shift back to hourly pay for managers will remove an incentive for other employees to become managers, and make it harder for restaurants to move people up.
- Flexibility will be lost. Under current rules, as long as an employee's primary duty is management, a manager has the flexibility to occasionally pitch in on duties traditionally performed by non-managerial employees, like preparing food or operating a cash register, depending on the restaurant's needs at the time. Bureaucratic, inflexible rules on managerial duties could mean managers lose that ability.

An increase in the salary threshold and change in the duties requirements could all but ensure that restaurant managers would no longer qualify as "exempt" employees, Amador said. "We won't get a sense of the precise impact until the proposal is released, but we are very concerned that the DOL will take an entire class of restaurant managers and re-define them as hourly employees."

The DOL has said it intends to propose its overtime-rule changes by November.

President Barack Obama will this week propose giving millions of Americans a raise.

On Tuesday the White House will begin releasing the details of a long-awaited overtime rule aimed at lifting wages for up to five million people as soon as 2016, according to sources familiar with the plans. The president will announce the rule formally during a trip Thursday to La Crosse, Wisconsin.

The proposed rule would more than double the salary level under which virtually all workers qualify for overtime pay whenever they work more than 40 hours in any given week. That threshold, now $23,660, would rise to $50,440 — a number that the administration believes would encompass many workers now classified as managers —and would increase automatically in future years.

"In this country, a hard day's work deserves a fair day's pay," Obama wrote in an op-ed published Monday evening by the Huffington Post — an outreach to the president's base on the left. "That's at the heart of what it means to be middle class in America."

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Obama's Hawaiian punch

TODD S. PURDUM

Meanwhile, the Chamber of Commerce, a major White House ally in the recent trade fight, is deeply opposed, with Randy Johnson, senior vice president of Labor, Immigration and Employee Benefits calling the rule "another example of the administration being completely divorced from reality and adding more burdens to employers and expecting them to just absorb the impact."

The new threshold wouldn't be indexed to overall price or wage increases, as many progressives had hoped. Instead, it would be linked permanently to the 40th percentile of income. That would set it at the level when the overtime rule was first created under President Franklin Delano Roosevelt.

"Without Congress, I'm very hard-pressed to think of a policy change that would potentially reach more middle class earners than this one," said Jared Bernstein, a former economic adviser to Vice President Joe Biden who's now a senior fellow at the Center on Budget and Policy Priorities.

The timing reflects an administration increasingly feeling the clock ticking: it expects the overtime rule to be challenged in court, and will press to complete by 2016 the review process during which comments are submitted by the public and then considered by the Labor Department and the White House as it prepares the final rule. If all goes according to plan, the rule will go into effect before Obama leaves office.

The proposed rule comes after months of pitched internal debate, with Labor Secretary Tom Perez and Domestic Policy Council director Cecilia Muñoz pushing to keep the threshold at the 40th percentile, and other members of the White House economic team, including Council of Economic Advisers chairman Jason Furman, trying to lower it to the 37th percentile.

Perez spent months conferring with business groups while his team wrote the rule. Obama made the decision to go forward in a meeting of his economic team several months ago, and originally the plan had been to roll out the rule last week. That was put on hold so that Obama could instead deliver the eulogy Friday at Rev. Clementa Pinckney's funeral in Charleston, S.C.

ALSO ON POLITICO

Sparse bipartisan crowd watches Obama sign trade bill into law

SARAH WHEATON

For years the White House has faced the frustrating reality that despite consistently improving economic numbers, wages have been largely stagnant. Obama's 2014 push to raise the minimum wage struck many middle class voters as not having much to do with them. But the overtime rule would affect workers whose salaries approach the median household income.

The regulation would be the most sweeping policy undertaken by the president to assist the middle class, and the most ambitious intervention in the wage economy in at least a decade. Administration aides warn that it wouldn't always lead to wages going up, though, because in many instances employers would cut back employee hours worked rather than pay the required time-and-a-half. Even so, they say, the additional hires needed to make up for that time could spur job growth, and give existing workers either more time with their families or more opportunities to work

second jobs and put more money in their pockets.

Former Communications Workers of America president Larry Cohen, still smarting from labor's defeat on trade, called the rule a "good step forward," but warned, "we need to do much deeper things about how U.S. workers participate in the world economy and what rights they have at home."

Business groups and congressional Republicans have been gearing up for a fight over the rule. Earlier this month a House Education and the Workforce subcommittee held a hearing largely devoted to excoriating the overtime rule, sight unseen. Republican Rep. Tim Walberg, the subcommittee chairman, pledged to oppose any overtime proposal that "goes too far" or that would "inflict harm on the nation's workplaces."

The overtime threshold has been updated only once since 1975 and now covers a mere 8 percent of salaried workers, according to a recent analysis by the left-leaning Economic Policy Institute. Raising the threshold to $50,440 would bring it roughly in line with the 1975 threshold, after inflation. Back then, that covered 62 percent of salaried workers. But because of subsequent changes in the economy's structure, the Obama administration's proposed rule would cover a smaller percentage — about 40 percent.

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SEUNG MIN KIM

The current overtime rules contain a white collar exemption, which excludes "executive, administrative and professional" employees from receiving overtime pay. Advocates for changing the rule say the white collar exemption allows employers to avoid paying lower-wage workers overtime. The proposed rule contains no specific changes to this "duties test," but instead solicits questions from the public about how best to alter it.

As in the past, the new threshold will not affect teachers, lawyers, doctors and judges, who are all automatically exempt from overtime.

Congressional Republicans will almost certainly attempt to block the overtime rule,

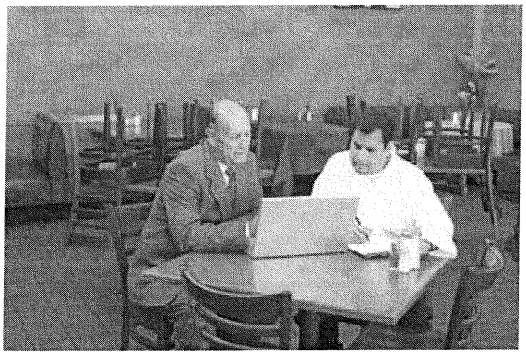
as they have tried to do with most of the significant labor-related regulations issued under the Obama administration over the past six months.

Management >

Food Service Managers

Summary

Quick Facts: Food Service Managers	
2012 Median Pay	$47,960 per year $23.06 per hour
Entry-Level Education	High school diploma or equivalent
Work Experience in a Related Occupation	Less than 5 years
On-the-job Training	None
Number of Jobs, 2012	321,400
Job Outlook, 2012-22	2% (Little or no change)
Employment Change, 2012-22	5,000



Food service managers are responsible for the daily operation of a restaurant.

What Food Service Managers Do

Food service managers are responsible for the daily operation of restaurants and other establishments that prepare and serve food and beverages. They direct staff to ensure that customers are satisfied with their dining experience and the business is profitable.

Work Environment

Food service managers work in restaurants, hotels, school cafeterias, and other establishments where food is prepared and served. Managers at fine-dining and fast-food restaurants often work longer hours—50 or more per week. The work can be hectic, and dealing with unhappy customers can be stressful.

How to Become a Food Service Manager

Most applicants qualify with a high school diploma and long-term work experience in the food service industry. However, some receive training at a community college, technical or vocational school, culinary school, or a 4-year college.

Pay

The median annual wage for food service managers was $47,960 in May 2012.

Job Outlook

Employment of food service managers is projected to show little or no change from 2012 to 2022. Jobseekers with a combination of long-term work experience in food service and a degree in hospitality, restaurant, or food service management will have the best job opportunities.

Similar Occupations

Compare the job duties, education, job growth, and pay of food service managers with similar occupations.

More Information, Including Links to O*NET

Learn more about food service managers by visiting additional resources, including O*NET, a source on key characteristics of workers and occupations.

What They Do ->

SUGGESTED CITATION:

Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, 2014-15 Edition, Food Service Managers, on the Internet at http://www.bls.gov/ooh/management/food-service-managers.htm (visited June 07, 2015).

Publish Date: Wednesday, January 8, 2014