City of Las Cruces®
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Council Action and Executive Summary

Item # 22 **Ordinance/Resolution#** 2741

For Meeting of November 17, 2014 (Ordinance First Reading Date)

For Meeting of December 1, 2014 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: **AN ORDINANCE AMENDING ORDINANCE NO. 2726 WHICH CREATED "THE LAS CRUCES MINIMUM WAGE ORDINANCE" WHICH IS TO BE CODIFIED AS ARTICLE III – MINIMUM WAGE, LAS CRUCES MUNICIPAL CODE 1997, SECTIONS 14-60 THROUGH 14-66, BY ADDING A NEW SECTION 14-67 TO THE LAS CRUCES MUNICIPAL CODE 1997 ENTITLED EXEMPTIONS, AND AMENDING SECTION 14-64(b).**

PURPOSE(S) OF ACTION:

To amend an ordinance.

COUNCIL DISTRICT: ALL		
Drafter/Staff Contact: Harry S. (Pete) Connelly	**Department/Section:** Legal/City Attorney	**Phone:** 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

At the October 27, 2014 Work Session of the Las Cruces City Council wherein Ordinance No. 2726 (the minimum wage ordinance passed by the City Council on September 8, 2014) was the subject matter of said session, the Mayor proposed that the said ordinance be amended to include the commonly used exemptions contained in the Fair Labor Standards Act ("FLSA"), 29 U.S.C.A. §§ 201 through 219; and, Section 14-64(b).

A majority of the City Council requested that the Mayor direct the City Manager to request that City staff prepare the amendments to Ordinance No. 2726 and return the amendment to the governing body for first reading at the November 17, 2014 regular meeting of the governing body, and with its enactment proposed for the regular meeting of the governing body on December 1, 2014.

The FLSA has a number of exemptions as indicated on Attachment "A" attached hereto. The exemptions of this ordinance are further defined as "commonly used exemptions" as indicated in Attachment "B".

(Continue on additional sheets as required)

It is the intent of the amendment, notwithstanding any provisions to the contrary in Ordinance No. 2726, to make the types of employers as shown on Attachment "B" exempt from paying the minimum wage as required by Ordinance No. 2726, and to allow employees to collect their unpaid wages in District Court.

It is anticipated that the second phase or increase in the minimum wage rate will be effective on January 1, 2016 unless unforeseen circumstances are indicative that there is an undue hardship to the entire community.

SUPPORT INFORMATION:

1. Ordinance.
2. Attachment "A", 29 U.S.C.A. § 213.
3. Attachment "B", Commonly used exemptions and other FLSA exemptions.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	*Budget Adjustment Attached*	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____for FY__.
N/A	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will enact amendments to add Section 14-67 Exemptions and to add an amendment to Section 14-64(b) of the "The Las Cruces Minimum Wage Ordinance."

(Continue on additional sheets as required)

2. Vote "No"; this will mean that Ordinance No. 2726 will not be amended and will remain as enacted on September 8, 2014.
3. Vote to "Amend"; this could include the modification of various elements of the proposed amendments to Ordinance No. 2726.
4. Vote to "Table"; this could allow further direction to staff.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

(Continue on additional sheets as required)

COUNCIL BILL NO. 15-022
ORDINANCE NO. 2741

AN ORDINANCE AMENDING ORDINANCE NO. 2726 WHICH CREATED "THE LAS CRUCES MINIMUM WAGE ORDINANCE" WHICH IS TO BE CODIFIED AS ARTICLE III – MINIMUM WAGE, LAS CRUCES MUNICIPAL CODE 1997, SECTIONS 14-60 THROUGH 14-66, BY ADDING A NEW SECTION 14-67 TO THE LAS CRUCES MUNICIPAL CODE 1997 ENTITLED EXEMPTIONS, AND AMENDING SECTION 14-64(b).

The City Council is informed that:

WHEREAS, at the October 27, 2014 Work Session of the Las Cruces City Council wherein Ordinance No. 2726 (the minimum wage ordinance passed by the City Council on September 8, 2014) was the subject matter of said session, the Mayor proposed that the said ordinance be amended to include the commonly used exemptions contained in the Fair Labor Standards Act ("FLSA"), 29 U.S.C.A. §§ 201 through 219; and

WHEREAS, a majority of the City Council requested that the Mayor direct the City Manager to request that City staff prepare amendments to Ordinance No. 2726 and return the amendments to the governing body for first reading at the November 17, 2014 regular meeting of the governing body, and with its enactment proposed for the regular meeting of the governing body on December 1, 2014.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT Ordinance No. 2726 is hereby amended by enacting Las Cruces Municipal Code 1997, Section 14-67 to read as follows:

Sec. 14-67 Exempt employers.

Notwithstanding language to the contrary as contained in sections 14-60, 14-61, 14-62, 14-63 and 14-64, employers whose businesses gross under $500,000 per year or employ the following types of employees are exempt from paying the City's minimum wage:

Workers with disabilities as certified by the State
Companions of the elderly or infirmed persons
Babysitters on a casual basis
Commissioned sales people
Salesmen, parts men, and mechanics employed by auto dealerships
Seasonal and recreational establishments
Newspaper delivery and employees
Motion picture theaters
Computer professionals, if exempt under the Fair Labor Standards Act
Drivers, driver's helpers, loaders
Executives, administrators, professional and outside sales employees, if exempt under the Fair Labor Standards Act.

(II)

THAT Ordinance No. 2726 is hereby amended by inserting the following language: "unpaid wages and interest thereon" in the last line of the first paragraph of Section 14-64(b), after the word *recover* to read as follows:

Upon prevailing, any employee shall recover unpaid wages and interest thereon, reasonable attorney's fees, and costs.

(III)

THAT Ordinance 2726, Section 14-62 is hereby amended to read as follows:

(a) All employers shall pay all employees no less than the minimum wage, and shall pay tipped employees no less than the tipped minimum wage, for each hour worked within the municipal limits of the City, as provided in this section.

(b) Beginning on January 1, 2015, the minimum wage shall be an hourly rate of $8.40 an hour.

(c) A tipped employee shall be paid no less than the following tipped minimum wage: beginning January 1, 2015, 40% of the minimum wage required in subjection (b) as of that date.

(d) An employee shall not be required to work more than forty hours in any week of seven days unless the employee is paid the higher of one and one half times the employee's regular hourly rate of pay or one and one half times the minimum wage as provided in subjection (b), for all hours worked in excess of forty hours. Tipped employees shall be paid the higher of their average hourly wage, including tips, for the previous forty hours worked, or one and one half times the minimum wage as provided in subsection (b).

(e) The City Council will meet prior to July 1, 2015 to determine if there should be an additional increase in the minimum wage.

(IV)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the above amendment to Ordinance No. 2726.

DONE AND APPROVED on this _____ day of _____, 20____.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Smith: ____
Councillor Pedroza: ____
Councillor Small: ____
Councillor Sorg: ____
Councillor Levatino: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

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

29 U.S.C.A. § 213

§ 213. Exemptions

Effective: January 23, 2004
Currentness

(a) Minimum wage and maximum hour requirements

The provisions of section 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title 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 subchapter II of chapter 5 of Title 5, except 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. Pub.L. 101-157, § 3(c)(1), Nov. 17, 1989, 103 Stat. 939

(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 # per centum of its average receipts for the other six months of such year, except that the exemption from sections 206 and 207 of this title 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 206 of this title, 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. Pub.L. 101-157, § 3(c)(1), Nov. 17, 1989, 103 Stat. 939

(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

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(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 agricultural 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 exempted by regulations, order, or certificate of the Secretary issued under section 214 of this title; 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. Pub.L. 93-259, § 23(a)(1), Apr. 8, 1974, 88 Stat. 69

(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. Pub.L. 93-259, § 10(a), Apr. 8, 1974, 88 Stat. 63

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13), (14) Repealed. Pub.L. 93-259, §§ 9(b)(1), 23(b)(1), Apr. 8, 1974, 88 Stat. 63, 69

(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; or

(17) any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is--

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(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.

(b) Maximum hour requirements

The provisions of section 207 of this title 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 31502 of Title 49; 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; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 U.S.C.A. § 181 et seq.]; or

(4) Repealed. Pub.L. 93-259, § 11(c), Apr. 8, 1974, 88 Stat. 64

(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) Repealed. Pub.L. 93-259, § 21(b)(3), Apr. 8, 1974, 88 Stat. 68

(8) Repealed. Pub.L. 95-151, § 14(b), Nov. 1, 1977, 91 Stat. 1252

(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

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statistical area, as defined and designated by the Office of Management and 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 207(a) of this title; 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 206(a)(1) of this title; 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. Pub.L. 93-259, §§ 15(c), 16(b), Apr. 8, 1974, 88 Stat. 65

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(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) Repealed. Pub.L. 95-151, § 5, Nov. 1, 1977, 91 Stat. 1249

(23) Repealed. Pub.L. 93-259, § 10(b)(3), Apr. 8, 1974, 88 Stat. 64

(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. Pub.L. 95-151, §§ 6(a), 7(a), Nov. 1, 1977, 91 Stat. 1249, 1250

(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.

(c) Child labor requirements

(1) Except as provided in paragraph (2) or (4), the provisions of section 212 of this title 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 subsection (a)(6)(A) of this section) required to be paid at the wage rate prescribed by section 206(a)(5) of this title,

(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 212 of this title 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 212 of this title 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 212 of this title 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 212 of this title 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.

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(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 chapter, 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 August 6, 1996, 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--

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(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.

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(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 212 of this title relating to oppressive child labor or a regulation or order issued pursuant to section 212 of this title. The Secretary shall, prior to making such a determination, conduct an investigation and inspection in accordance with section 212(b) of this title.

(vi) The reporting requirements of this subparagraph shall expire 2 years after August 6, 1996.

(6) In the administration and enforcement of the child labor provisions of this chapter, 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 chapter, 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 206, 207, and 212 of this title 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 principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

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(e) Maximum hour requirements and minimum wage employees

The provisions of section 207 of this title shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 206(a)(3) of this title, 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 207 of this title if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 206(a)(3) of this title, that economic conditions warrant such action.

(f) Employment in foreign countries and certain United States territories

The provisions of sections 206, 207, 211, and 212 of this title 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 U.S.C.A. § 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 206 of this title 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 207 of this title 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 207 of this title.

(i) Cotton ginning

The provisions of section 207 of this title 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 207 of this title 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

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(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.

CREDIT(S)

(June 25, 1938, c. 676, § 13, 52 Stat. 1067; Aug. 9, 1939, c. 605, 53 Stat. 1266; Oct. 26, 1949, c. 736, § 11, 63 Stat. 917; Aug. 8, 1956, c. 1035, § 3, 70 Stat. 1118; Aug. 30, 1957, Pub.L. 85-231, § 1(1), 71 Stat. 514; July 12, 1960, Pub.L. 86-624, § 21(b), 74 Stat. 417; May 5, 1961, Pub.L. 87-30, §§ 9, 10, 75 Stat. 71, 74; Sept. 23, 1966, Pub.L. 89-601, Title II, §§ 201 to 204(a), (b), 205 to 212(a), 213 to 215(b), (c), 80 Stat. 833 to 838; Oct. 15, 1966, Pub.L. 89-670, § 8(e), 80 Stat. 943; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; June 23, 1972, Pub.L. 92-318, Title IX, § 906(b)(1), 86 Stat. 375; Apr. 8, 1974, Pub.L. 93-259, §§ 6(c)(2), 7(b)(3), (4), 8, 9(b), 10, 11, 12(a), 13(a) to (d), 14 to 18, 20(a) to (c), 21(b), 22, 23, 25(b), 88 Stat. 61 to 69, 72; Nov. 1, 1977, Pub.L.95-151, §§ 4 to 8, 9(d), 11, 14, 91 Stat. 1249, 1250 to 1252; Sept. 27, 1979, Pub.L. 96-70, Title I, § 1225(a), 93 Stat. 468; Nov. 17, 1989, Pub.L. 101-157, § 3(c), 103 Stat. 939; Sept. 30, 1994, Pub.L. 103-329, Title VI, § 633(d), 108 Stat. 2428; Dec. 29, 1995, Pub.L. 104-88, Title III, § 340, 109 Stat. 955; Aug. 6, 1996, Pub.L. 104-174, § 1, 110 Stat. 1553; Aug. 20, 1996, Pub.L. 104-188, § 2105(a), 110 Stat. 1929; Oct. 11, 1996, Pub.L. 104-287, § 7(5), 110 Stat. 3400; Nov. 13, 1997, Pub.L. 105-78, Title I, § 105, 111 Stat. 1477; Oct. 31, 1998, Pub.L. 105-334, § 2(a), 112 Stat. 3137; Jan. 23, 2004, Pub.L. 108-199, Div. E, Title I, § 108, 118 Stat. 236.)

Notes of Decisions (2205)

29 U.S.C.A. § 213, 29 USCA § 213
Current through P.L. 113-163 (excluding P.L. 113-128) approved 8-8-14

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Attachment "B"

elaws - Fair Labor Standards Act Advisor

Exemptions

Some employees are exempt from the overtime pay provisions, some from both the minimum wage and overtime pay provisions and some from the child labor provisions of the Fair Labor Standards Act (FLSA). Exemptions are narrowly construed against the employer asserting them. Consequently, employers and employees should always closely check the exact terms and conditions of an exemption in light of the employee's actual duties before assuming that the exemption might apply to the employee. The ultimate burden of supporting the actual application of an exemption rests on the employer.

Exemptions are typically applied on an individual workweek basis. Employees performing exempt and non-exempt duties in the same workweek are normally not exempt in that workweek.

Following is a list of some of the more commonly used exemptions. This list is not intended to be all-inclusive. By clicking on the underlined text below, you will be linked to information on the exemption. Other, less commonly used FLSA exemptions, are listed after this section.

COMMONLY USED EXEMPTIONS

Commissioned sales employees of retail or service establishments are exempt from overtime if more than half of the employee's earnings come from commissions *and* the employee averages at least one and one-half times the minimum wage for each hour worked. You may also wish to review the applicable regulation.

Computer professionals: Section 13(a)(17) of the FLSA provides that certain computer professionals paid at least $27.63 per hour are exempt from the overtime provisions of the FLSA.

Drivers, driver's helpers, loaders and mechanics are exempt from the overtime pay provisions of the FLSA if employed by a motor carrier, and if the employee's duties affect the safety of operation of the vehicles in transportation of passengers or property in interstate or foreign commerce. You may also wish to review the applicable regulation.

Farmworkers employed on small farms are exempt from both the minimum wage and overtime pay provisions of the FLSA. You may also wish to review the specific regulation. Young workers employed on small farms, with parental consent, are also exempt from the child labor provisions of the FLSA. For more information on exemptions from the child labor provisions of the FLSA in agriculture, click the underlined text. Other farmworkers are exempt from the FLSA's overtime provisions. You may also wish to review the specific regulation.

Salesmen, partsmen and mechanics employed by automobile dealerships are exempt from the overtime pay provisions of the FLSA. You may also wish to review the applicable regulation.

Seasonal and recreational establishments: Employees employed by certain seasonal and recreational establishments are exempt from both the minimum wage and overtime pay provisions of the FLSA. You may also wish to review the applicable regulation.

Executive, administrative, professional and outside sales employees: (as defined in Department of Labor regulations) and who are paid on a salary basis are exempt from both the minimum wage and overtime provisions of the FLSA.

OTHER FLSA EXEMPTIONS

(MW = minimum wage OT = overtime CL = child labor)

- Aircraft salespeople - OT
- Airline employees - OT
- Amusement/recreational employees in national parks/forests/Wildlife Refuge System - OT
- Babysitters on a casual basis - MW & OT
- Boat salespeople - OT
- Buyers of agricultural products - OT
- Companions for the elderly - MW & OT
- Country elevator workers (rural) - OT
- Workers with disabilities - MW
- Domestic employees who live-in - OT

- Farm implement salespeople - OT
- Federal criminal investigators - MW & OT
- Firefighters working in small (less than 5 firefighters) public fire departments - OT
- Fishing - MW & OT
- Forestry employees of small (less than 9 employees) firms - OT
- Fruit & vegetable transportation employees - OT
- Homeworkers making wreaths - MW, OT & CL
- Houseparents in non-profit educational institutions- OT
- Livestock auction workers - OT
- Local delivery drivers and driver's helpers - OT
- Lumber operations employees of small (less than 9 employees) firms - OT
- Motion picture theater employees - OT
- Newspaper delivery - MW, OT & CL
- Newspaper employees of limited circulation newspapers - MW & OT
- Police officers working in small (less than 5 officers) public police departments - OT
- Radio station employees in small markets - OT
- Railroad employees - OT
- Seamen on American vessels - OT
- Seamen on other than American vessels - MW & OT
- Sugar processing employees - OT
- Switchboard operators - MW & OT
- Taxicab drivers - OT
- Television station employees in small markets - OT
- Truck and trailer salespeople - OT
- Youth employed as actors or performers - CL
- Youth employed by their parents - CL

Note: For information about the application of these exemptions, contact your local Wage and Hour District Office.

Continue

City minimum wage ordinance would allow ALL of the current federal exceptions currently afforded to them, to include the following:

If an employee's tips combined with the employer's direct wages of at least $__.___ an hour does not equal the federal minimum hourly wage, the employer must make up the difference.

1. After 90 consecutive days of employment or the employee reaches the age of 20, whichever comes first, the employee must receive a minimum wage of $8.40 per hour

General exclusions:

- Businesses that gross under $500,000 per year.
- Workers with disabilities
- Companions of the elderly
- Babysitters on a casual basis
- Commissioned sales people
- Farm workers
- Salesmen, parts men, and mechanics employed by auto dealerships
- Seasonal and recreational establishments
- Newspaper Delivery and employees.

Possible Exclusions:

- 49 or less full-time workers (35 hrs. or less = Full-time)
- $ ___ dollar credit per hour if health insurance is being offered.