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Minimum Wage, Overtime Pay, and Child Labor: Inventory of Proposals in the 108th Congress to Amend the Fair Labor Standards Act

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Summary

The Fair Labor Standards Act (FLSA, 29 U.S.C. 201-219) is the basic federal statute dealing with minimum wages, overtime pay, child labor, and related issues. Enacted in 1938, it has been modified through the years to take into account changing workplace trends and to meet new worker and employer concerns.

The act has undergone general amendment on eight separate occasions (1949, 1955, 1961, 1966, 1974, 1977, 1989, and 1996) in addition to numerous more specific legislated changes. It has also been the subject of continuing administrative rulemaking by the Department of Labor (DOL) — and has been the focus of extensive litigation that has impacted the manner in which the act is applied.

The FLSA is divided roughly into three parts corresponding to its subject areas: minimum wage (Section 6), overtime pay (Section 7), and child labor (Section 12). These are accompanied by a body of statutory exemptions or exceptions (Section 13). Definitions appear in Section 3. Other sections deal with administration, penalties, and related matters.

Nothing in the act requires that Congress revisit the statute. Amendment has tended to respond to change in the value of the minimum wage. As the level of the wage floor has eroded through inflationary pressure, Congress has revisited the FLSA and, while addressing the wage rate, it has also, often, revised coverage patterns and modified overtime pay and other requirements. Child labor, by and large (but with exceptions), has been primarily the responsibility of the Secretary of Labor operating within general guidelines laid down by Congress.

Until recently, legislation to amend the FLSA had been free-standing — the product of extended hearings. In 1996, that pattern shifted. The 1996 FLSA amendments were adopted as a floor amendment to a broad proposal dealing with business and related tax issues. As a result, some have come to view *as a tradition* a linkage of labor standards enhancement with sometimes unrelated benefits for employers. Others argue that there is no inherent reason to tie FLSA amendments to benefits for employers.

In the 108th Congress, further changes were proposed with respect to the FLSA — some to increase worker protections and others, arguably, to reduce them. Most of these proposals have been narrowly focused, reviewing a single aspect of the Act — though several have been more complex. Only one, dealing with Amish children, was adopted.

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Minimum Wage, Overtime Pay, and Child Labor: Inventory of Proposals in the 108th Congress to Amend the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA, 29 U.S.C. 201-219) is the basic federal statute dealing with minimum wages, overtime pay, child labor, and related issues. Almost immediately after its enactment in 1938, various Members of Congress proposed its amendment to address worker and employer concerns. The act has now undergone general amendment on eight separate occasions (1949, 1955, 1961, 1966, 1974, 1977, 1989, and 1996) in addition to numerous more specific legislated changes in the statute. It has also been the subject of continuing administrative rulemaking by the Department of Labor (DOL).

In the 108th Congress, further changes have been proposed — some to increase worker protections and others, arguably, to reduce them. Only one bill — that dealing with Amish children — was adopted. This report provides an overview of legislation proposed during the 108th Congress. For analysis of the issues, consult the CRS reports listed in the footnotes of this report.

An Introduction to the FLSA

When the federal wage and hour statute (the FLSA) was enacted in 1938, it was not an especially new concept. Questions about minimum wages, overtime pay, child labor, and related issues had been a central part of American (and world) labor policy concerns for at least half a century. But only in the wake of the Great Depression (1929 ff.) was Congress able to forge a comprehensive federal measure that would withstand judicial review while respecting the differing interests of employers and workers.

Structure of the Fair Labor Standards Act

The FLSA is divided roughly into three parts: minimum wage (Section 6), overtime pay (Section 7), and child labor (Section 12). These are accompanied by a body of statutory exemptions or exceptions (Section 13). Definitions appear in Section 3. Other sections deal with administration, penalties, and related matters.

The federal minimum wage is set in statute and remains at a fixed rate (declining in value over time as a result of inflationary pressures) until changed through legislative action. Although the general rate is currently \$5.15 an hour, there are also a series of sub-minima (or special treatment) for students, youth, persons with

disabilities, regularly tipped employees, and others. In addition, special treatment for certain small businesses has been written into the statute.¹

In general, the *overtime requirements* of the act now set 40 hours as the standard workweek. Thereafter, a worker must be compensated at not less than 1½ times a worker's *regular rate* of pay for hours worked in excess of 40 per week. No daily hours standard is provided in the act, thus allowing for flexible scheduling within the 40 hour standard. As with the act's minimum wage requirement, exceptions from the overtime standard have been built into the statute. These exceptions are technical and complex but allow employers a variety of options beyond the general requirements of the act.²

Efforts to restrict or to regulate *child labor* date from the 19th century. After a series of federal initiatives uniformly deemed unconstitutional, language dealing with child labor was incorporated within the original FLSA of 1938. Beyond several broad and general child labor provisions, the act leaves wide discretion in standard setting to the Secretary of Labor who exercises that authority through the rulemaking process. But, periodically, Congress has intervened to deal directly with a particular aspect of child labor law.³

Focus of the Legislative Process

Because wage/hour and child labor legislation has been on the congressional agenda, intermittently, through more than six decades, its consideration has developed along more or less standard lines — but with certain recent variations.

Speaking generally, labor standards laws have been opposed by employers and supported by workers. Economists can be found of all sides of the issue — with “little consensus” with respect to impact.⁴ The arguments, pro and con, voiced during the first three decades of the 20th century, remain *en vogue* — little seems to have changed.

Packaging of wage/hour measures can be critical. From the original Act of 1938 through the 1989 FLSA amendments, such legislation was freestanding. While it might deal with overtime pay or child labor or minimum wage or immediately related subjects (singularly or as part of a package), it normally did not include broader tax

¹ See CRS Report RL30993, *The Fair Labor Standards Act: Minimum Wage in the 108th Congress*, by William G. Whittaker.

² See CRS Report RL32215, *The Fair Labor Standards Act: Overtime Pay Issues in the 108th Congress*, by William G. Whittaker.

³ CRS Report RL31501, *Child Labor In America: History, Policy and Legislative Issues*, by William G. Whittaker.

⁴ See Willis J. Nordlund, *The Quest for A Living Wage: The History of the Federal Minimum Wage Program* (Westport, Conn.: Greenwood Press, 1997), p. xvii. Nordlund is referring, here, specifically to the minimum wage — but that same conclusion might arguably be drawn with respect to overtime pay and to child labor.

or unrelated business matters. However, in 1996 (the 104th Congress), various FLSA amendments were added to an industry-oriented tax package as a floor amendment.

As the debate over the minimum wage developed in the 106th and 107th Congresses, the issue of *linkage* came to be viewed as *traditional*. Thus, some now argue that an increase in the minimum wage *for workers* must be combined with tax breaks *for employers*: that the former should not move forward without the latter. Others argue that there is no reason to tie minimum wage standards (or changes in overtime pay and child labor policy) to benefits for employers: that they stand independently as issues of economic justice and worker protection.

Almost every element of the FLSA can be contentious. Each proposed change can (and often does) bring forth advocates, pro and con, to argue the justice and/or economic impact of proffered legislation. The approach taken — whether a freestanding measure or a package (whether of purely labor standards or linked to business concerns) — can, by offering diverse legislative choices, either create an incentive for enactment or provide a reason for opposing any action at all. Further, support for or opposition to labor standards laws has often been philosophical. The issues, however, are also essentially economic: who wins, who loses, and who pays.

An Inventory of Legislative Proposals

In the 108th Congress, legislative proposals dealing with the minimum wage, overtime pay, and child labor are taking a variety of forms. The tables that follow provide a simple overview of the various initiatives, broken down by the three general categories: minimum wage, overtime pay, and child labor. In some cases, a particular bill will be listed on more than one table.

Table 1. Minimum Wage Proposals of the 108th Congress

(The federal minimum wage is now \$5.15 per hour)

Bill no.	Sponsor	Increase minimum to:	Effective date for the final step increase	Action beyond referral	Other components
H.R. 936	Miller, George	\$6.65	To \$5.90 per hour 60 days after enactment; to \$6.65 1 year later	—	CNMI minimum wage component ^a ; mandates a “living wage” for workers engaged in federal contract work; and makes certain changes in TANF
H.R. 965	Miller, George	\$6.65	To \$5.90 per hour 60 days after enactment; to \$6.65 one year later	—	CNMI minimum wage component ^a
H.R. 1829	Hoekstra	—	—	Passed House Nov. 6, 2003 (H.Rept. 108-286); received in Senate, Nov. 7, referred to Judiciary Committee. Passed House on Nov. 6, 2003.	Provides system of minimum wages for inmate workers in the Federal Prison Industries program ^b
H.R. 1996	Wilson, Joe	—	—	—	Exempts certain computer-related workers from minimum wage and overtime pay ^c
H.R. 2065	Tiberi	—	—	—	Exempts employees who are licensed funeral directors and embalmers ^d
H.R. 2145	Andrews	—	—	—	Conditions the minimum wage-exempt status of organized camps upon compliance with certain safety standards
H.R. 2263	Sessions	—	—	—	Exempts employees engaged in seasonal sale of fireworks
H.R. 3174	Payne	—	—	—	Adjusts coordination of FLSA with Motor Carrier Act of 1935

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Bill no.	Sponsor	Increase minimum to:	Effective date for the final step increase	Action beyond referral	Other components
H.R. 4256	Miller, George	\$7.00	To \$5.85 per hour 60 days after enactment; to \$6.45 a year later; and to \$7.00 one more year later	—	CNMI minimum wage component ^a
H.R. 4396	DeMint	—	—	—	Exempts certain construction engineering and design professionals
H.R. 5043	Bell	\$7.00	To add an indexation component	— -	— -
H.R. 5093	English	\$6.50	After Oct. 2007	— -	Provides expensing, modification of tip credit, and related tax matters
S. 20	Daschle	\$6.65	To \$5.90 per hour 60 days after enactment; to \$6.65 one year later	—	CNMI minimum wage component ^a
S. 224	Daschle	\$6.65	To \$5.90 per hour 60 days after enactment; to \$6.65 one year later	Legislative Calendar No. 3: Jan. 29, 2003	CNMI minimum wage component ^a
S. 237	Graham (SC)	—	—	—	Exempts certain construction engineering and design professionals
S. 292	Graham (SC)	—	—	—	Exempts employees who are licensed funeral directors and embalmers ^d
S. 448	Dodd	\$6.65	To \$5.90 per hour 60 days after enactment; to \$6.65 one year later	—	CNMI minimum wage component ^a ; mandates a “living wage” for workers engaged in federal contract work; with certain changes in TANF
S. 495	Graham (SC)	—	—	—	Exempts certain computer-related workers from minimum wage and overtime pay ^c

Bill no.	Sponsor	Increase minimum to:	Effective date for the final step increase	Action beyond referral	Other components
S. 2370	Kennedy	\$7.00	To \$5.85 per hour 60 days after enactment; to \$6.45 a year later; and to \$7.00 one more year later; Legislative Calendar No. 496	—	CNMI minimum wage component ^a
H.R. 4, S.Amdt. 2945	Boxer, Kennedy	\$7.00	Increases wage in steps over 26 months from date of enactment	Cloture vote fails, 51 yeas to 47 nays (Apr. 1, 2004) on H.R. 4	CNMI minimum wage component ^a (H.R. 4 is welfare reform reauthorization legislation)

- a. Bill would extend federal minimum wage protection, in steps, to workers in the Commonwealth of the Northern Mariana Islands (CNMI).
- b. For background purposes, see CRS Report 96-892, *Federal Prison Industries: UNICOR*, by JoAnne O'Bryant; and 93-895, *The Fair Labor Standards Act: Minimum Wage Protection for Prison Inmate Workers and for non-Prison Labor*, by William Whittaker (both archived: available from the author: 7-7759)
- c. Alternative pay standards are established by the act. For general background, see CRS Report RL30537, *Computer Services Personnel: Overtime Pay Under the Fair Labor Standards Act*, by William Whittaker.
- d. For general background, see CRS Report RL30697, *Funeral Services: The Industry, Its Workforce, and Labor Standards*, by William Whittaker.

Table 2. Overtime Pay Proposals of the 108th Congress

Bill no.	Sponsor	Action beyond referral	Impact	Other components
H.R. 745	Stark	—	Limits mandated overtime for nurses serving Medicare patients, with other related provisions	—
H.R. 1119	Biggert	Hearing held; reported, H.Rept. 108-127; placed on Union Calendar, No. 64 ^a	Provides a “comp time” option for private sector employers and their employees	—
H.R. 1996	Wilson, Joe	—	Exempts certain computer-related workers from minimum wage and overtime pay ^b	—
H.R. 2065	Tiberi	—	Exempts employees who are licensed funeral directors and embalmers ^c	—
H.R. 2263	Sessions	—	Exempts employees engaged in seasonal sale of fireworks	—
H.R. 2660	Regula	Passed House and Senate. See H.R. 2673, P.L. 108-199	Language limiting DOL option on Section 13(a)(1) overtime pay rulemaking dropped from conference report, passed by House and Senate ^d	Appropriations for DOL and related agencies
H.R. 2660, H.Amdt. 222	Obey	Defeated in House (July 10, 2003)	Prevents DOL from administratively expanding overtime pay exemption under the FLSA ^d	—
H.R. 2665	King	—	Prevents the DOL from administratively expanding overtime pay exemption under the FLSA ^d	—
H.R. 3174	Payne	—	Adjusts coordination of FLSA with Motor Carrier Act of 1935	—
H.R. 4396	DeMint	—	Exempts certain construction engineering and design professionals	—
S. 237	Graham (SC)	—	Exempts certain construction engineering and design professionals	Minimum wage exemption
S. 292	Graham (SC)	—	Exempts employees who are licensed funeral directors and embalmers ^c	Minimum wage exemption
S. 317	Gregg	—	Permits private sector employers to offer their employees <i>compensatory time off</i> and certain work hours alternatives to cash payment for overtime	—

Bill no.	Sponsor	Action beyond referral	Impact	Other components
S. 373	Kennedy	—	Limits mandated overtime for nurses serving Medicare patients, with other related provisions	—
S. 495	Graham (SC)	—	Exempts certain computer-related workers from minimum wage and overtime pay ^b	—
S. 991	Inouye	—	Limits mandated overtime for nurses serving Medicare patients, with other related provisions	—
S. 1485	Kennedy	—	Prevents DOL from administratively expanding the overtime pay exemption under Section 13(a)(1) of the FLSA ^d	—
S. 1611	Specter	—	Provides for a commission to review overtime pay policy; freezes DOL administrative action pending commission report	—
H.R. 2660, S.Amdt. 1580	Harkin	Approved by Senate (September 10, 2003), dropped in conference	Prevents the DOL from administratively expanding the overtime pay exemption under Section 13(a)(1) of the FLSA ^d	—
S. 1637, S.Amdt. 2881	Harkin	Offered March 22, 2004; 1 st cloture vote fails, 51 yeas to 47 nays (March 24, 2004); second cloture vote fails, 50 yeas to 47 nays (April 7, 2004). Bill recommitted with instructions (April 8, 2004); called up, May 2004 and amended; passed Senate, June 2004; conference on House bill (H.R. 4520); Harkin amendment dropped.	Prevents the DOL from administratively expanding the overtime pay exemption under Section 13(a)(1) of the FLSA ^d	Broad legislative package dealing with tax, trade and related matters
S. 1637, S.Amdt. 3107	Harkin	Offered May 3, 2004; agreed to by Senate, May 4, 2004: 52 yeas to 47 nays. [see S. 1637, above]	Prevents the DOL from administratively expanding the overtime pay exemption under Section 13(a)(1) of the FLSA ^d	—

Bill no.	Sponsor	Action beyond referral	Impact	Other components
S. 1637, S.Amdt. 3111	Gregg	Offered May 4, 2004; agreed to by Senate, May 4, 2004: 99 yeas to) nays. [see s. 1637, above]	Lists certain categories of work which could be expected to be covered by overtime pay protection notwithstanding Section 13(a)(1).	—
S. 2975	Harkin	Passed by the Senate	Would amend the FLSA to prevent curtailment of Section 13(a)(1) exemptions	— -

- a. CRS Report RL31875, *Compensatory Time vs. Cash Wages: Amending the Fair Labor Standards Act*, by William Whittaker.
- b. CRS Report RL30537, *Computer Services Personnel: Overtime Pay Under the Fair Labor Standards Act*, by William Whittaker.
- c. CRS Report RL30697, *Funeral Services: The Industry, Its Workforce, and Labor Standards*, by William Whittaker.
- d. CRS Report RL32088, *The Fair Labor Standards Act: A Historical Sketch of the Overtime Pay Requirements of Section 13(a)(1)*, by William Whittaker. Restraints upon DOL's authority to issue a Section 13(a)(1) overtime regulation have been attempted in connection with other legislation as well — as discussed in the report.

Table 3. Child Labor Proposals of the 108th Congress

Bill no.	Sponsor	Action beyond referral	Impact
H.R. 756	Foley	—	To prohibit “exploitive child modeling” involving persons under 17 years of age
H.R. 1943	Pitts	Hearing, House Subcommittee on Workforce Protections, October 8, 2003. See H.R. 2673	Permits employment of children, 14 years of age, in wood processing plants
H.R. 3139	Lantos	—	Comprehensive restructuring of FLSA child labor requirements; adds prohibition on <i>youth peddling</i> ; modifies coverage with respect to youth who work in agriculture
H.R. 2673	Bonilla	Omnibus Appropriations Conference Report, P.L. 108-199	Substance of H.R. 1943 and S. 974 included in H.R. 2673: permits Amish youth, over age 14, to be employed in certain wood processing plants (H.R. 2673 provides appropriations for DOL, <i>inter alia</i>)
H.R. 4190	Markey	—	Requires the Secretary of Labor to declare operation of power driven amusement park rides hazardous for persons under 18 years of age
S. 404	Bunning	—	To prohibit “exploitive child modeling” involving persons under 17 years of age
S. 974	Specter	See H.R. 2673	Permits employment of children, over the age of 14 years, in wood processing plants

Table 4. General or Structural Amendment of the Fair Labor Standards Act, Proposed During the 108th Congress

Bill no.	Sponsor	Action beyond referral	Impact
H.R. 2516	Ballenger	—	To amend Section 3(f) to include Christmas tree farming within the definition of <i>agriculture</i>
S. 2088	Kennedy	—	To amend Section 16 of the FLSA to waive state sovereign immunity with respect to enforcement of wage/hour and related labor standards under the act